

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 23, 2023  
Rough Draft

**WAYNE:** Good afternoon and welcome to the Judiciary Committee. My name is Justin Wayne. I represent Legislative District 13, which is north Omaha and northeast Douglas County. We will start off by having senators and staff do self-introductions, starting with my right, Senator Ibach.

**IBACH:** Thank you. I'm Teresa Ibach, the senator from District 44, which is eight counties in southwest Nebraska.

**GEIST:** Suzanne Geist, District 25 here in Lincoln.

**JOSH HENNINGSSEN:** Josh Henningsen, committee legal counsel.

**ANGENITA PIERRE-LOUIS:** Angenita Pierre-Louis, committee clerk.

**BLOOD:** Good afternoon. Senator Carol Blood, representing District 3, which is western Bellevue and eastern Papillion, Nebraska.

**HOLDCROFT:** Rick Holdcroft, west and south Sarpy County.

**DeKAY:** Good afternoon. Barry DeKay, District 40, representing Holt, Knox, Cedar, Antelope, northern part of Pierce and most of Dixon County.

**WAYNE:** Also assisting us is our committee pages, Logan Bartek-- Brtek from Norfolk, who is a political science major and criminology major at UNL, and Isabel Kolb from "U Omaha" who is a political science and pre-law major. This afternoon we will be hearing five bills and we will be taking them up in the order listed outside of the room. We'll have one joint hearing, which will be LB0-- LB106 and LB107. On the tables to the right of me is a blue testifier sheet. If you are planning on testifying, please fill out the blue testifier sheet. That makes sure we have accurate records. If you do not wish to testify or you heard somebody say this exact same thing you're going to say before you come up, you can also fill out a gold sheet and it will let you know to-- it will let us know that you wanted to speak or you wanted to record your presence and it will list your position on the bill for the record. Also note that it's the Legislature's policy that all letters or records must be to the committee, noon the day prior to the hearing. Any handouts submitted by the testifier, we ask that you have ten copies. If you don't have ten copies, please provide them to the page ahead of time so we can have them for your testimony. Testimony will begin with the introducer providing the opening statement, followed by supporters of the bill, then those in

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opposition and then those in neutral capacity. And then we'll have the introducer close if they choose to do so. We ask that you state and spell your first and last name for the record. Because of the temperature, our heating and air will be going on and off. And it's-- you can probably already tell the acoustics are not very well in this room so please speak up so we can hear. We will be using the three-minute light system. That means if your testimony starts, it will be green. It will turn yellow at the one-minute warning and then red, we ask you to wrap up your final thoughts. I would like to remind everyone, including senators, to please turn off or silence or vibrate your cell phone. And with that, we will begin today's hearing with LB137. Senator Geist, welcome to your Judiciary Committee.

**GEIST:** Thank you, Chairman Wayne, and good afternoon, members of the Judiciary Committee. For the record, my name is Suzanne Guest, S-u-z-a-n-n-e G-e-i-s-t. I represent District 25, which is the southeast corner of Lincoln and Lancaster County. This past interim, I met with families who have lost loved ones due to fentanyl-laced drugs. I introduced this bill for Taryn, for AJ and all the other victims who ended up dying from an accidental fentanyl overdose. You'll hear in a little bit about Taryn and the Griffith family. The story of their beautiful daughter inspired this bill. Taryn was a beautiful young mother who was trying to make better choices for her and her daughter. Every day that I have-- every story that I have heard when I speak with parents, they have children that have had great opportunities to look forward to, but for a variety of reasons, they've either relapsed or had a substance use problem. However, they did not know that, that what they were taking was laced with fentanyl. Many of them were trying to change to be role models for those around them. Unfortunately, prosecutors cannot charge in Nebraska courts the person who manufactured or distributed the drugs in these instances. According to a World Herald article between 2018 and November of 2022, at least 256 Nebraskans died from poisonings and overdoses on fentanyl and other synthetic opioids; 138 of these deaths occurred in 2021 and 2022. So over the half-- that's over half of the deaths since 2018. So we're seeing an increase as we go further. We've been hearing in the news more and more that law enforcement agencies are seized, seizing fentanyl pills or fentanyl-laced pills and I contend something needs to be done. This past interim, I researched the best way to hold someone accountable when they knowingly, knowingly manufacture or distribute a controlled substance that results in death or serious bodily injury. I looked at different ways to accomplish this in statute and decided the best way was to allow for an enhanced penalty.

The federal government also allows for an enhanced penalty in this exact same instance. By allowing for an enhanced penalty and not specifically defining fentanyl in statute, we are creating the ability to hold someone accountable when a new-- when and if a new more, more potent drug makes its way to the streets of Nebraska. This bill will allow Nebraska to be proactive instead of reactive to fentanyl and any newly emerging drug. You may hear from a few behind me that we shouldn't mention in our bill about severe bodily harm and I just disagree. They will tell you it's broadly defined in our current statute. And even though this may be true, there is case law that discusses severe bodily harm and that case law describes how the person will never be the same again because of the actions taken. At the end of the day, we all know that the prosecutors who see the totality, totality of the crime will have the final say on whether or not a person is charged with an enhanced penalty. With all these things in mind, I ask for your support and I'd be happy to answer any questions. Know that there are people behind me that have far more depth of expertise in this area than I do, but I'll be happy to answer anything I can.

**WAYNE:** Any question from the committee? Seeing none, thank you for being here. Well, I'm assuming you'll be here for close.

**GEIST:** I will.

**WAYNE:** OK. First proponent, first proponent. Welcome.

**MIKE GUINAN:** Good afternoon. Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Mike Guinan, M-i-k-e G-u-i-n-a-n, and I am the criminal bureau chief for the Nebraska Attorney General's Office. I appeared before you today on behalf of the Attorney General, Mike Hilgers, and the Nebraska Attorney General's Office in support of LB137. According to the DEA data, Nebraska law enforcement officials' agencies seized over 1,738 pounds of meth and over 167 pounds of illicit fentanyl last year. The DEA, citing 2022 CDC overdose data, states that two-thirds of overdose deaths in the United States involve fentanyl or some other illicit synthetic opioid. Nebraska DHHS overdose data from 2020 found that the largest percentage of deaths by overdose in Nebraska involved illicitly manufactured fentanyls, 34 percent, followed closely by methamphetamine, 31 percent. As according to the DNA, only two milligrams of fentanyl is considered a potentially lethal dose. The increase of risk associated with increasingly powerful and increasingly available illicit controlled substances like fentanyl and

carfentanil merits the changes proposed in LB137. Nebraska homicide statutes do not currently contemplate a situation where an individual illicitly distributes the drug to another who then dies after ingestion. LB137 aims to address this deficiency by increasing penalties for distribution when death or serious bodily injury follows. These provisions are modeled after similar provisions in the federal law which increase penalties for the distributor when death or serious bodily injury follows. For instance, if an individual were to manufacture, distribute or possess with, possess with the intent to distribute a kilo of illegal, highly addictive opioid Schedule I drug heroin, under federal law, he would face ten years to life. However, however, if death or serious bodily injury resulted from such use of the distributed drug, he would face 20 to, 20 to life. Under Nebraska law, if the individual manufacturer distributed or possessed 28 to 140 grams of heroin, he would face 5 to 50 and the same if death or serious bodily followed. LB137 would increase the penalty by one classification level where there-- were death and serious bodily injury followed. LB137 does pattern off the federal law, which bases the sentence for death or serious bodily injury on the type or schedule of the drug and not on the death or serious bodily injury itself. Thus, under federal law, a Schedule I or II drug resulting in death or serious bodily injury would result in a 20 to life sentence, whereas a Schedule III drug would-- the dealer would face up to 15 years of incarceration. To the contrary, a number of states have passed homicide law, homicide laws addressing a drug-induced homicide punishable at a fixed level or a fixed range.

**WAYNE:** Thank you for your testimony. Any questions? I got, I got a question. So--

**MIKE GUINAN:** Sure.

**WAYNE:** --what would be the element you would have to prove underneath this?

**MIKE GUINAN:** We would have-- the prosecutor would have to prove the amount-- depending on what, what level you're at, right-- so the amount of the illicit drug plus the distribution plus the proximate causation of the death that followed.

**WAYNE:** So that's kind of the proximate-- you said the word better to me, got to write it down. So if somebody were to sell something, how do you know-- how would you distinguish if they didn't add anything to it?

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**MIKE GUINAN:** That's-- that would be the challenge. Senator, that would be the challenge if you were going to prosecute, right? So you would have to know that this is the, the drug that was distributed and that was the one that was ingested and that proximately caused the death. That would-- those are the elements that the state would have to prove.

**WAYNE:** I guess I'm trying to figure out is how-- is this workable?

**MIKE GUINAN:** Is it workable?

**WAYNE:** I mean-- yes. Unless you had somebody say, I mixed X, Y and Z and sold it or you were there-- well, no, you could be there at the time of distribution. But if you didn't have eyes on them, how to improve that next element that it was actually not mixed. That's what I'm trying to figure out.

**MIKE GUINAN:** Oh. Those would be the questions that you would have to address and base on your investigation, right. So if-- it would-- in that event, it would be a challenging set of facts in order to prove your case. So you'd have to just digest that information and make a determination whether or not you're going to charge it.

**WAYNE:** I know what we're trying to solve. I'm just trying to think if there's a different way, that's all, so thank you.

**MIKE GUINAN:** Yeah.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here.

**MIKE GUINAN:** Yes. Thank you.

**WAYNE:** Next proponent. Welcome back, sir.

**PATRICK CONDON:** Thank you, Chairman Wayne and members of the committee. My name is Patrick Condon, P-a-t-r-i-c-k C-o-n-d-o-n. I'm the Lancaster County Attorney and I'm here in support of LB137. And I would say that in my 32 years of prosecuting here in Lancaster County, there has been one occasion which I have charged and I think it's getting to what you were mentioning, Senator Wayne, but there was one occasion where I charged a manslaughter charge in conjunction with a delivery of methamphetamine. And that was because we had the individual test-- or waive Miranda and stated that they had actually injected the methamphetamine into the, into the woman that ended up--

died. So that is the only time that we have had that happen. But I think there were specific facts where the defendant-- they make these deals. You know, there will be two or three of them there and two or three of them will be there. And we had a case this past-- in the summer, during the time where we have the cocaine and fentanyl overdoses, where individuals were brought back-- one or two individuals may be brought back by the use of the, the Narcan and then another individual died. They can testify that they bought this controlled substance from this individual so we can have them say that they tested-- that they, they bought the controlled substance, they used it and, and they almost died. And in one particular case, the individual did die for the use of that-- from the use of that laced cocaine. So it is, as Mr. Guinan testified, it is something that we have to look at and that we can look at through the facts. But it is something that we can develop through the facts and through the investigation. So this bill also-- and I, I appreciate not naming a specific drug because we just recently-- I just recently had another case where it was pentobarbital that was the cause of death. And pentobarbital is something mainly used in animals so, you know, people get that. And so these are-- this, this bill allows us to basically take this one step further. So if somebody is delivering a controlled substance such as methamphetamine and it leads to death, it would seem that that should be a higher penalty classification than just the simple delivery of that, of that controlled substance. And this bill allows us to do this by using the enhancement provision of it. So, again, the Lancaster County Attorney's Office is in support of LB137. And with that, I would take any questions.

**WAYNE:** Senator DeKay.

**DeKAY:** Thank you. How far back in the chain of events can you look to prosecute? Say, if you have a dealer that sells to one party and they sell or give to another party that ultimately dies from it, can you go back? How many--

**PATRICK CONDON:** I think in looking at this bill, it talks about it, it-- the bill looks, as I read it, it looks to the immediate person you're delivering to. So if, if, if I deliver it to you and then you deliver it to Senator Holdcroft and Senator Holdcroft, something happens to him, I think you could be charged. And, you know, that would be something where perhaps through a conspiracy, that is-- we charge as a conspiracy. It could be used for an enhancement in the way of a conspiracy.

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**DeKAY:** All right. Thank you.

**WAYNE:** So I just kind of want to-- I was about to say tease it out. I really don't like when Conrad says that all the time on Education so I'm not going to use that word because he uses it too much for me and I use it now too much. So what happened with the gun, the gun laws is there's a-- kind of a misnomer if we don't charge them, the feds don't, don't charge, right? But that's not true. When we changed our gun laws to add a mandatory minimum, what the feds did was say, you, you take them now and you bear the cost of incarcerating these individuals. And it's a hard three. Right now, are the feds picking up these cases?

**PATRICK CONDON:** The ones that happened this-- in Lancaster County, the feds did pick up that individual, that, that, that case. That was the one involving the individual stealing from the Nebraska State Patrol.

**WAYNE:** So I got-- and Senator Geist, I'm all in favor of trying to figure out this fentanyl thing. I'm just, I'm just trying to figure out how we don't do the same thing we did with the guns, where the feds now walk away and say, you charge it all and then we bear the cost of housing. I think in the fiscal note, it says about \$11,000 per year for an inmate. So it isn't like these people are going to be back out on the streets, just the fed-- the feds would charge them and they would bear their cost. And again, I'm thinking about a prison.

**PATRICK CONDON:** Sure.

**WAYNE:** You think there's some, some language we can do that, you know, keep the feds a little-- maybe harder sentence so they pick up the case versus us picking up that case?

**PATRICK CONDON:** Well, and, and just because of your profession, Senator, I know, I know, you know, you're an attorney also. You understand. I mean, in the federal side, you know, in-- I think it's, what, 82 days on a, on a year for a federal sentence where for stateside, it's day for day. So there is still kind of-- and I, and I don't think feds would necessarily say we're not going to take this depending on, you know, the nature of the crime. I mean, I think they have other thresholds that need to be met before they take the crime.

**WAYNE:** Right.

**PATRICK CONDON:** And, and I'm not sure what those are. In regards to the gun cases, I think they've enhanced those penalties now, maybe, to

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ten years on some cases. So, so there is still the opportunity for the  
feds to--

**WAYNE:** Right.

**PATRICK CONDON:** --take those. But I understand what you're saying and  
I just think, you know, the thing is, is from-- I can't get-- I  
necessarily can't make a federal case sometimes and, and that's--

**WAYNE:** That's the issue.

**PATRICK CONDON:** --that's why I would appreciate this.

**WAYNE:** Understood. I'm-- thank you. Any questions? Seeing none, thank  
you for a dialogue. I appreciate it.

**PATRICK CONDON:** Thank you.

**WAYNE:** Next proponent. Welcome.

**JENNIFER BOGDANOFF:** Good afternoon. I am Jennifer Bogdanoff,  
J-e-n-n-i-f-e-r B-o-g-d-a-n-o-f-f, and I am speaking on behalf of the  
Omaha Police Department in favor of LB137. I am currently assigned as  
a sergeant in the narcotics unit. In 2017, we noticed a significant  
increase in overdose deaths in Douglas County. Overdose deaths  
continue to be on the rise and even tripled the number of  
homicide-related deaths. For example, in 2021, Douglas County reported  
92 overdose deaths and 32 homicide-related deaths. We have seen an  
increased trend in drug dealers selling counterfeit pills pressed to  
mimic legitimate pharmaceutical medications such as oxycodone,  
Percocet and Xanax. The DEA reported in 2022 of the fentanyl-laced  
prescription pills that they tested, six out of ten contained a lethal  
dose of fentanyl. In 2021, the Omaha Police narcotics unit conducted  
an audit of drug lab results pertaining to the oxycodone or mm-- M30  
pills that have been seized by the Omaha Police Department and tested.  
All of the oxycodone/M30 pills that have been submitted to the lab for  
testing came back as containing fentanyl and not oxycodone so they  
were all counterfeit pills. Fentanyl is highly addictive, very lethal,  
cheap to manufacture and easily accessible. During interviews with  
victims that have survived an overdose, they have advised  
investigators that they believed they were purchasing legitimate  
prescription medication, even though they were not buying it from a  
pharmacy but from a drug dealer. We also see fentanyl mixed with  
cocaine, heroin and methamphetamine. A user thinks they are taking a  
hit of cocaine and end up overdosing because unbeknownst to them, the

substance also contained fentanyl. The Omaha Police Department recognized that overdoses and overdose deaths were a very real concern or problem in the Omaha metro area. In an effort to combat this growing problem, in September of 2022, the Omaha Police Department partnered with the Omaha DEA to investigate these incidents. The OPD and DEA have pulled their resources and expertise and have begun responding jointly to suspected overdose death investigations. They are working together in an attempt to identify the supplier of the drugs to the overdose victim and are presenting these cases for federal prosecution. At this point in time, the only prosecutorial option available is to present the investigation to the U.S. Attorney's Office for federal prosecution. Overdose deaths affect all walks of life. Addiction knows no boundaries, does not recognize race or socioeconomic status. Addiction can literally happen to anyone. Twenty-five out of 50 states currently have a drug-induced homicide type of statute. The passing of LB137 would be another tool for law enforcement to battle the war on drugs in Nebraska. It would put the drug dealers on notice that law enforcement, prosecutors and citizens of Nebraska take this issue very seriously and they can be held accountable for their actions.

**WAYNE:** Any questions? Senator DeKay.

**DeKAY:** In your opinion and with your experience, why would fentanyl be mixed with other basically lethal drugs? Is it to enhance the addiction or is there a reason to do it that would cause-- want to cause bodily harm to somebody?

**JENNIFER BOGDANOFF:** A lot of times, the, the users and/or the dealers may not even know that fentanyl is being laced with the cocaine or methamphetamine. It may be coming from their-- the source countries that way. The information that I have read is that the, like, the Mexican cartels have-- that, that we like to have our fentanyl stronger here in the United States. They know that it could be a lethal amount, but that a lot of the fentanyl users do like to have it stronger. And so they've been making it stronger. So the-- I, I don't have a great answer as to why. A lot of times, they don't even know that it may be laced with fentanyl.

**DeKAY:** Thank you.

**WAYNE:** So in those cases, are the feds picking it up or are they not picking it up?

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**JENNIFER BOGDANOFF:** They have picked up-- they do pick up some of the cases. The issue that we're starting to see is that in Omaha, the U.S. Attorney's Office is wanting to only accept cases that are associated with a federal law enforcement agency. So state and locals are not able to just present these cases like we have in the past. That's, that's new this year and so they're rejecting some of our Omaha Police submitted cases.

**WAYNE:** Thank you. Any other questions? Seeing none, thank you for being here. You can only testify on one bill today.

**PAT DEMPSEY:** Sounds good.

**WAYNE:** All right. Welcome, sir.

**PAT DEMPSEY:** Chairman Wayne and members of the Judiciary Committee, my name is Pat Dempsey, P-a-t D-e-m-p-s-e-y, and I'm a homicide detective with the city of Omaha. I also serve as the secretary for the Omaha Police Officers Association. I'm here today in support of LB137 and the legislative opportunity here before us to hold drug dealers accountable for the death and devastation they continue to cause in our community. As you certainly know, the manufacture and distribution of fentanyl is destroying lives everywhere, including Omaha and the whole state of Nebraska. This is legitimately the deadliest overdose crisis in the history of our country and I applaud the members of this committee and the Legislature for taking serious action on increased penalties for those who contribute to this crisis. Our officers, our department, our association are in regular communication with law enforcement in neighboring cities and states who agree that tougher penalties for dealers are a huge step forward. We are also aware of legislation similar to LB137 in statehouses around the country and appreciate the tough and decisive message that Nebraska can send to those who knowingly deal and distribute a product that has killed and continued to kill hundreds of thousands of people. I urge the committee to advance LB137. I thank you for your time. I would like to just address one thing. One of the things in the homicide unit that we've come across with fentanyl, it's not mixed in an FDA lab. It's not made here in the states where every particle is accounted for. So when they do mix fentanyl in a foreign country where it comes in, they could throw a large batch in there and you can have a pill that has multiple grains of fentanyl in it and you could have a pill that doesn't have any in it at all. So that's kind of where the lethality of it comes from is one person, they-- may both get the same pill, but one has a bunch of fentanyl in it and the other one doesn't.

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**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here.

**PAT DEMPSEY:** Thank you.

**WAYNE:** Next proponent. Next proponent. Welcome.

**LINDA VERMOOTEN:** Good afternoon. My name is Linda Vermooten, L-i-n-d-a V-e-r-m-o-o-t-e-n. I first want to thank Senator Geist for bringing forth this legislation. I speak from a little bit of a different perspective as a clinical mental health practitioner and a nurse and having to work with individuals that have experienced a loss of a family member due to the use of a drug that they thought was just going to give them a little high or an evening of fun. I've worked with other individuals that are highly addicted now that didn't realize that this drug they were getting illegally was mixed and has caused a lot of harm physically, emotionally and also financially because they have to pick up the bill related to this. If we don't have severe penalties, these people are going to continue to come into our country and sell these drugs on our streets and harm our good citizens. We have to do all within our power to protect them from these. And looking through the bill, it sounds like a really good bill and it will help our law enforcement make sure that when they capture them, there's a good chance of prosecution so we don't have a revolving door that they go in and they come out. When you sit with these families and you hear their stories, it'll break your heart. I wish you could just spend an hour or two with me in my office to hear. They now have to live with the consequences. Some family members have lost a teenager. Some family members have lost a child who was away at college and now they are living with the devastation of this. There is an old phrase that we used to use. And that is if you do the crime, you have to do the time and you have to pay the penalty. But some of our crimes are so light on penalty and I think it's good that we're strengthening our law enforcement to say there's a penalty. Because if there's no deterrent, they're not going to stop. They don't care about the people they sell it to. They care about their family. So I'd really encourage you to advance this legislation. Thank you for your time, senators.

**WAYNE:** Thank you. Any questions from the committee? Thank you for being here today. Next proponent. Next proponent. Proponent. Welcome.

**ADAM WIBLISHOUSER:** Thank you. Members of the Judiciary Committee, thank you for allowing me the time to speak today and take the time to

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hear me out. Three minutes isn't sufficient time to cover what I need to say so I've attached a supplement for your copies-- with your copies. I hope and pray you'll take the time to read it before casting your vote.

**WAYNE:** Can you spell-- state and spell your name.

**ADAM WIBLISHOUSER:** Sure. My name is Adam Wiblishouser. My last name is W-i-b-l-i-s-h-o-u--

**WAYNE:** Thank you.

**ADAM WIBLISHOUSER:** --s-e-r. I am the father of a 16-year-old son who was poisoned and killed last November 11 by a counterfeit pill. I will never see him again and I will never be able to see what he would have become in life. The person responsible for supplying the poison will likely never be held accountable. I use the word poisoning because that's exactly what it is. A person unlawfully created a pill to look like another drug. In this case, AJ thought it was a Percocet, but instead the pill contained no Percocet but a lethal dose of fentanyl. To my knowledge, it is not common for a person to die from taking a single Percocet tablet. In fact, it's very unlikely. This is where I have a hard time wrapping my head around the law. If I was to serve my wife a glass of antifreeze and tell her it's Kool-Aid and she drank it and died, I would certainly be charged with murder. I would expect nothing less. But if I create a poison pill and sell it to another relatively harmless drug that ends up killing someone, I'm not guilty of a serious crime? How can this be? Where is the logic? Most importantly, where is the deterrence to the drug dealer? Since AJ's death, I've educated myself extensively on fentanyl and have learned that currently, right here in Lincoln and Omaha, eight out of ten pills obtained illegally are counterfeit. From there, you're rolling the dice on what you're getting. Most likely, they will be fentanyl or some variation of it. These drugs are attractive to dealers because they are highly addictive, the high lasts for a shorter amount of time and leaves the buyer coming back for more and more each time, spinning the chamber in a literal game of Russian roulette. These pills are widely and easily accessible to anyone, even kids on social media, most notably Snapchat, an app that takes great care to ensure parents can't monitor their teen's activities and is resistant to law enforcement. More times than not, these pills are exchanged from one person to another, neither of which have known they contain fentanyl. For example, I-- for example I buy on social media some pills that I believe to be oxycodone. They appear exactly as the prescription would

appear in any drug manual. Not knowing, I share them with some friends. How many people are going to die that day from that one drug transaction? You can find everything that you need to set yourself up to make these pills on Amazon, spending only a couple of hundred bucks. In making a pill, a two milligram dose of fentanyl is a potentially lethal dose. That's two-millionths of a gram, about the size of a couple of grains of salt. Now, imagine these pills being produced in someone's kitchen or garage by someone who has no scientific training and likely does not have the knowledge or tools to properly measure a safe dosage. I'm sure they're not setting out to kill people, but if they do, whoops. Think about your sons, daughters and grandchildren being thought of as collateral damage for some thug to make 20 bucks. They thought the pill might help them relax and get through the next exam at school. They are being poisoned. They are not getting what they believe they buy. And if this doesn't scare you, it should. In closing, I don't support LB137 because I want to see or cause mass incarceration. In fact, I want to see quite the opposite. I want to arm local prosecutors and law enforcement with the tools they need to do their job and to serve as a concrete deterrent. On the same breath, if we're dealing with--

**WAYNE:** That's your time, sir. I'm pretty strict about it, but I have to-- oh, I got your testimony here and let's see if anybody asks some questions. Any questions? Senator Ibach.

**IBACH:** Thank you. You mentioned Snapchat in your, in your testimony. Can you expand on how kids use Snapchat?

**ADAM WIBLISHOUSER:** Yeah, absolutely. What I, what I've learned really just recently is if someone like you or I sign up for Snapchat, what we're going to see is basically what looks like a teenybopper app where you can go on there, make funny faces and put dog ears and stuff on your head and maybe chat with some of your friends. What these teens are seeing is completely different. Drug dealers can find them. They can locate and pinpoint their exact location. They can reach out to them and they're advertising drugs so when they scroll and they're looking through their videos, they're seeing advertisements for drugs and how to contact a drug dealer if that drug dealer isn't contacting them. Snapchat has known about this for a very long time and has done little to nothing to, to stop it.

**IBACH:** To monitor it. Is it probably the most popular social media site to, to engage in--

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**ADAM WIBLISHOUSER:** Snapchat boasts on its investor website under Snap Inc. that they reach 90 percent of persons aged 13 to 23 years old in 20-plus countries.

**IBACH:** Wow.

**ADAM WIBLISHOUSER:** That is where AJ most likely obtained the, obtained the fentanyl. And from what I understand, that's, that's where most of it's coming from, at least, at least around here.

**IBACH:** Thank you. Thank you, Mr. Chairman.

**WAYNE:** Any other-- and thank you for the longer-- we'll def-- I'll definitely read it.

**ADAM WIBLISHOUSER:** Thank you.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here today. Next proponent. Welcome.

**ROBERT GRIFFITH:** Thank you. My name is Robert Griffith, G-r-i-f-f-i-t-h. I go by Michael. Thank you all for taking the time to listen to my testimony. Taryn was a beautiful young woman, inside and out, with her whole life ahead of her. With a six-month baby girl starting a new jog, finally, she found the true meaning of life, along with the love of her life, her baby girl. Taryn was the type of person who made friends easily, enjoyed life, enjoyed being outdoors in the company of her friends. On November 30, 2021, all that ended when someone offered her a counterfeit pill laced with enough fentanyl to kill eight people. Besides the loss of our daughter, what makes this hard for us is we have the drug dealer's name and the Lincoln Police Department also has video footage of this individual giving her the pill. Yes, a lot of proof but yet he will not be charged for the murder of my daughter under the state of Nebraska because there is no law to protect Nebraskans from this deadly crisis. Synthetic opioids are truly a weapon of mass destruction, a violent crime that needs to be addressed in our state. Why do I say it's a violent crime? That night of Taryn's death, she was with a so-called friend. Instead of rendering help, we're calling 911. She had Taryn placed in the back room in the establishment they were at. Took Snapchat pictures of her and posted it on the Internet. I was able to obtain one of these pictures and it shows my daughter clenching her chest and gasping for air, very similar to a strangulation, except it's a lot slower process and she does not physically have the hands around her neck. It was

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cutting off her air supply. Society in general takes a look at these death as an overdose. We need to change the narrative and start looking at these deaths as overdoses when the majority of synthetic opioids should be treated as a poison. How can we continue to label these overdoses when the victim, as in Taryn's case, was deceived and thinking they were taking a legit pill? Majorities who die from synthetic opioids know what they took, a counterfeit Percocet, an Adderall or a Xanax. They do not know that cocaine, marijuana, methamphetamines, drug of choice was laced with fentanyl and fentanyl analogs, analogs like carfentanil, which is 100 times more potent than fentanyl. And today, drug cartels are using drugs like Xylazine, which is an animal tranquilizer veterinarians use for large animals. The purpose is a drug that extend the euphoria effect of the drug. This is a non-opioid, so Narcan has no effect in saving the life of the victim. Just recently, U.S. drug enforcement has issued a public safety alert warning Americans about the widespread, widespread threat of fentanyl mixed with Xylazine called Tranq or zombie drug, making this one of the most deadliest drugs in our country has ever faced.

**WAYNE:** Thank you for your testimony. Any questions? I have one. Do you have a-- I know you have written testimony. Did you provide copies?

**ROBERT GRIFFITH:** I have one copy. I didn't make 12. I do have one--

**WAYNE:** My question is can--

**ROBERT GRIFFITH:** --right here,

**WAYNE:** --can we make copies? Is there any--

**ROBERT GRIFFITH:** Yes, I can make--

**WAYNE:** OK.

**ROBERT GRIFFITH:** I can get copies.

**WAYNE:** They'll make copies for us. But I will-- I'm going to ask you an opening question to give you time to wrap up your final thoughts. That's a question. I mean, you came down here--

**ROBERT GRIFFITH:** Wrap up my--

**WAYNE:** --and I want, I want you to be heard. You came down here. You should get heard. But we do-- we are strict about three minutes, but I want you to--

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**ROBERT GRIFFITH:** Yeah, I--

**WAYNE:** --wrap up.

**ROBERT GRIFFITH:** --have a lot more to say. You know, back in 2018, the State Patrol seized 120 pounds of fentanyl, which is enough to kill 26 million Americans. That's enough to kill every Nebraskan 13 times over. That's a weapon of mass destruction. And how many Nebraskans need to die of this weapon of mass destruction before the state considers this to be an issue? How many more families need to be devastated and have their lives quickly destroyed by these drug dealers, drug pill pushers that have no respect for life? Currently, there are 24 states that do have a-- or 25, including the federal that have a drug-induced homicide. And also South Carolina is also looking to pass a law this year.

**WAYNE:** I appreciate it. And you gave them a copy, right? My question to you, though, would you want it to be a part of the record or just for the committee because you brought it?

**ROBERT GRIFFITH:** Part of the record.

**WAYNE:** OK. Thank you. I just didn't, didn't want to-- because I know we're just doing it kind of on the fly. I wanted to make sure your privacy is respected too. So we'll put that as part of the record, as an exhibit, and we'll also make sure everybody has a copy of it so thank you. Any questions from the committee? Seeing none, thank you for being here today.

**ROBERT GRIFFITH:** Thank you.

**WAYNE:** Next proponent. Proponent. Switching to opponents. Welcome.

**SPIKE EICKHOLT:** Thank you. Good afternoon, members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is spelled E-i-c-k-h-o-l-t. I'm appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to LB137. Myself and one of our members did meet with Senator Geist a few weeks ago and discussed our concerns with the bill and explained what our opposition was. I know there are people here who have suffered a tremendous loss and I don't want my opposition testimony to somehow be interpreted as dismissive of their loss. I know that's the trite thing for them to hear, but I want to say that. Mr. Condon mentioned this earlier when he was testifying as a proponent. I think it's inaccurate to say that there's nothing that can be done in state law to prosecute a death--

delivery of a controlled substance results in that death. We do have the crime of manslaughter, which can be proved if the state-- if a person commits an unlawful act and while the commission of that act is happening, there's a death that results. In my handout, I reference a 1981 Nebraska Supreme Court case in which the defendant was found guilty of delivery of a controlled substance and manslaughter for providing his friend with a sleeping pill when they were both drinking and smoking marijuana. I actually saw Mr. Condon before he testified and I attached to my statement a news article where-- I remember when I was in the public defender's office where Mr. Condon got a conviction for somebody who confessed to providing methamphetamine to someone who died of a drug overdose. And they were able to convict of manslaughter and delivery of a controlled substance. So I think it's, it's inaccurate to say that nothing can be done to convict somebody of a homicide case because there are cases that show that that is impossible to do. Admittedly, this is a slightly different approach because you don't have to prove-- or a prosecutor doesn't have to prove two crimes. They simply have to show the enhancement of the underlying crime of delivery. But I would submit as Mr. Wayne-- or Senator Wayne asked earlier, the difficulty in proving a case, identifying the deliverer, identifying the controlled substance is going to be the same thing that may be an obstacle right now with convicting somebody with manslaughter. And I don't know if that's going to change if this law is passed. Secondly-- and Senator Geist mentioned this in her introduction-- one concern that we have is that the crime the bill criminalizes or provides for the enhancement of death or serious bodily injury. Our statute and case law defines similar-- serious bodily injury to include the risk of serious or permanent disfigurement or impairment of the function of a body. Arguably, any kind of use of fentanyl is a serious risk and we would submit that if the committee is going to act on this, that perhaps it only apply to deliveries that result in actual death. Admittedly, this is similar to federal law, as you heard people say, and there's nothing stopping the state from mimicking the federal law in doing this, so. The state did so in 2009. I've distributed an article from Henry Cordes where he summarizes that we can trace the growth in our prison population when we decided to match our state laws with the federal drug-- with federal gun laws. And Senator Wayne mentioned that earlier and that's one of the reasons we would urge caution in adopting this bill. And then I'll answer any questions if anyone has any.

**WAYNE:** Thank you. Any questions from the committee? Senator McKinney.

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**McKINNEY:** Thank you. Thank you, Spike. Has the war on drugs worked?

**SPIKE EICKHOLT:** I would say we've not won it I would say no. I mean, it's worked to a certain extent. It's helped incarcerate people and it's helped create a system of prosecution. It's worked, but I don't know that it's really resulted in discouraging the use of drugs.

**McKINNEY:** Why not?

**SPIKE EICKHOLT:** I mean, I don't know if I have all the answers. I mean, part of it is it's, it's societal. Sometimes people use drugs as just a-- to, to treat the general sort of malaise of just living in this world. It's just a treatment a ton of people have for anxiety, some people have for depression. People self-medicate using illegal drugs. It's marketed and, and pushed by industries to young people to use drugs. It's a cool thing for kids to do. There's just a whole culture of it. Sometimes addressing that could be done in a variety of different ways. We seem to have for years led on in a o-- our carceral response; get tough, increased penalties, provide for arrests, don't let people bond, provide for enhancements. And I don't think that method has worked. I think that some people in some, some countries have had more success with education, treatment. Some countries experimented with legalizing drugs where you have an industry that regulates so you don't have the problem with, with imitation of controlled substance with people mixing things on their own. If you have it sort of legal, that's one way to approach it. So there's a variety of different ways and I know I was just kind of rambling, so.

**McKINNEY:** Thank you. I was late, but I was listening and I heard a couple of people mention the war on drugs and being tough. And it's not to diminish what's happened because I think it's horrible. And I don't think anybody should be giving any-- selling any type of fentanyl to anybody because it's killed people that I know, that I grew up with, that I went to school with. But it just sparks a light on my brain going back to the war on drugs around the crack epidemic and how that was treated more so carceral and punitive versus treating addictions, treating the root cause as to why individuals would use drugs or sell drugs and those types of things. And I think that should be the war on drugs. We shouldn't always be less increased penalties because we're going to scare these people. Because in reality, we had the war on drugs and a crack epidemic and people are still getting convicted of smoking crack every day. So I don't know if increasing penalties eliminates that, that reality.

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**SPIKE EICKHOLT:** I agree.

**McKINNEY:** Thank you.

**WAYNE:** Any other questions? Senator DeKay.

**DeKAY:** If the war on drugs isn't working, how do, how do we prevent these tragedies from happening in the future if we don't try to enact some kind of bill so that somebody is held accountable if they're going for that \$20 profit off of sell and fix or whatever? How do we, how do we combat that? Because education-- you know, things happen in a spur of the moment. Education is not always the best answer because late at night, things happen that education-- not everybody is thinking in a clear mind. So how do we hold people accountable?

**SPIKE EICKHOLT:** Well, I don't know that we're not holding people accountable now. As you heard-- and I think some of the proponents acknowledged that these instances are charged by the federal government now. We do have state laws that apply. Delivery of a controlled substance, whether it results in injury or death in anybody, is at least-- for the drugs we're talking about, at least 1 to 50 years imprisonment. If it's within a school zone or if it's a certain minimum amount of at least ten grams, it's a mandatory minimum; 3 up to 5 to 20 years to life imprisonment. It's fairly significant now. So I would respectfully--

**DeKAY:** That's--

**SPIKE EICKHOLT:** --say that we have, we have criminal penalties now for what's going on.

**DeKAY:** That's for delivering the controlled drug?

**SPIKE EICKHOLT:** Yes.

**DeKAY:** So where do we go with if we have a-- if you want to call it a homicide that takes place or a death that takes place because of the delivery of these drugs, how-- should that penalty be enhanced further or use the same--

**SPIKE EICKHOLT:** It could be and that's what the bill proposes. As I tried to explain-- I was not very coherent in my opposition testimony initially. We have the crime of manslaughter. One way you can prove manslaughter is if a death results in an unintentional act. Doesn't have to be intentional. There was a case that I cite in my letter from

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August 2022 where our Supreme Court upheld a manslaughter case because of a traffic infraction being the underlying unlawful act. So if the prosecutor and the cops can learn the identity of somebody, know that what they delivered to somebody resulted in their death, I would submit they could convict them with manslaughter now and in addition to the delivery of a controlled substance. Now, maybe it's difficult just factually to prove that whatever was given to this person ended up actually being ingested by that person, which ended up resulting in a death. That might be difficult to prove. I don't know if that's going to be any easier to prove with the bill. I think it's still going to be difficult, as one-- I think the woman from the Omaha Police Department explained. Sometimes the federal government has thrown out cases.

**DeKAY:** And I'm not, I'm not in forensics or anything, but do blood, urine, tissue, hair follicles or anything, can that help prove--

**SPIKE EICKHOLT:** It can.

**DeKAY:** --the drug that was ingested?

**SPIKE EICKHOLT:** I think so, yes. The difficulty might just be simply if-- learning where it came from before it was ingested.

**WAYNE:** Senator DeBoer.

**DeBOER:** Under current law, if you were trying to charge someone with manslaughter and they sold the drug, but they thought it was whatever-- cocaine--

**SPIKE EICKHOLT:** Right.

**DeBOER:** --but it was actually fentanyl, led to the death, but the person who sold it thought that it was cocaine, you couldn't get them for-- they wouldn't have any-- they wouldn't have the requisite intent, would they?

**SPIKE EICKHOLT:** For manslaughter?

**DeBOER:** Yeah.

**SPIKE EICKHOLT:** You don't-- for the manslaughter, if a death results during the commission of unlawful, unlawful act it is not an intentional crime. It's not even a knowing crime.

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**DeBOER:** So then it doesn't matter if it's--

**SPIKE EICKHOLT:** That's right. That's why the case that I cited from August last year was reckless driving or willful reckless driving, something like that. A person was driving recklessly and hit somebody walking on the side of the road. He said, I didn't see that person there.

**DeBOER:** So the intent--

**SPIKE EICKHOLT:** I didn't intend.

**DeBOER:** --is in the underlying crime--

**SPIKE EICKHOLT:** That's right.

**DeBOER:** --rather than manslaughter.

**SPIKE EICKHOLT:** And if you look at the article that I attached and Mr. Condon referenced earlier, they were able to get that manslaughter conviction because of the confession of the defendant in that case where he admitted to injecting the methamphetamine, either in an amount too much or-- I don't know if it was mentioned something else or what, but whatever he did resulted in the death.

**DeBOER:** OK. Thank you.

**WAYNE:** Now I have to go back and look at the fel-- why wouldn't felony murder apply?

**SPIKE EICKHOLT:** I don't think that's one of the underlying felonies. It's-- has to be, I think it's six or seven different felonies: robbery, burglary, sexual assault, something else--

**WAYNE:** That's right. So wouldn't that be an easier fix?

**SPIKE EICKHOLT:** Well, that would make-- it would-- could be. That would be then a first-degree murder with life imprisonment on the table. And arguably, if you look--

**WAYNE:** That isn't the question you wanted me to ask.

**SPIKE EICKHOLT:** That's not where I wanted to steer the discussion necessarily, but if you look at 28-303 sub (3), that's the current first-degree murder statute.

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**WAYNE:** Right.

**SPIKE EICKHOLT:** It does provide for prosecution if you intentionally, with premeditation, poison someone--

**WAYNE:** Right.

**DeBOER:** That's the--

**SPIKE EICKHOLT:** --which you can do.

**WAYNE:** But you have to have intentional. That's the issue.

**SPIKE EICKHOLT:** That's correct.

**WAYNE:** OK.

**SPIKE EICKHOLT:** That wouldn't support a murder conviction, but it would support-- if it's something illegal, a manslaughter conviction.

**WAYNE:** OK. I think what you're seeing is here is everybody's recognizing the issue of, of fentanyl or trying to figure out how to get there. Any other questions from the committee? Senator McKinney. Senator McKinney.

**McKINNEY:** What if I'm with my friend? I'm not selling to him. We're just together and I have some pills that I think are Percocets. I give my friend a Percocet. My friend passes away. What is that?

**SPIKE EICKHOLT:** Well, if you-- if they can prove that that's a delivery of a controlled substance-- because Percocet isn't a controlled substance-- presumably you're not a pharmacist and that person doesn't have-- your friend does not have a prescription so that's delivery-- results in death. And they can show that what you gave them resulted in that person's death. I think that would also be manslaughter. That's the unlawful act and during the commission of that unlawful act, death results.

**McKINNEY:** OK. All right. Thank you.

**WAYNE:** Any other questions? Seeing none, thank you for being here. Any other opponents, opponents? Anybody here testifying in a neutral capacity? Neutral capacity? As Senator Geist comes up to close, we have two letters for the record and both of those are in support. Welcome back, Senator Geist.

**GEIST:** Thank you. Oh, this is a tough one. I am passing out a letter from the Omaha Sheriff's Department in support. But besides that, part of my intention here isn't to spread wide incarceration. It's not to spread the net wide. It's actually because it is difficult to prosecute some of these cases, it's sort of the guardrail that, that I wanted to use to make sure we're not just mass incarcerating. But I do believe that it's justice for those who do this kind, this kind of crime. And, and the perception of, of the people that that end up being victims here is not necessarily someone addicted to drugs and not necessarily someone with an addiction problem, but someone who's taking something that they don't know is laced with fentanyl, which only takes two milligrams, as you heard earlier, to be lethal. And that's like a few grains of salt so it's so tiny. It's, it's so different from other opioids in that sense where other op-- in weight. It-- we just can't compare it to the other opioids because it's so much more potent. And I don't want this time to go by without me thanking the families who were here, who had the courage to show up today to tell their story. I'm glad that you got the handouts. I would encourage you to read their stories. They've been through a lot and this is because I'm acknowledging what they've been through, the reason that I brought this bill. And the reason that we didn't choose manslaughter is because it is a lower penalty and I did intend to have a higher penalty. I know that that's an option that could be used. That can range from probation to 20 years, which actually with good time, is ten. You get parole way before that. So I do-- I did intend to make a IIA felony or up to that-- a judge would have the discretion to go lower than that, but a IIA or a-- I'm sorry, a IB felony, which is what we've raised this enhancement to be, is 20 to life. So the judge would have discretion within that and understand that with good time, that means ten to whatever the top number the judge decided. And that would be given what the severity of the crime is under the discretion of the judge. But I believe if I were sitting out here and I was one of these family members, that would-- it doesn't change what they've been through, but it does give a sense of justice, I believe, to what they've been through. With that, I would take any questions that you would have.

**WAYNE:** Any questions from the committee? I have a lot more questions, but we can talk about it. I'm trying to think through it, but--

**GEIST:** OK.

**WAYNE:** --in the essence of time--

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**GEIST:** I'd be happy to--

**WAYNE:** --I think we're, we're on the same page. We got to figure out--

**GEIST:** Yeah.

**WAYNE:** --how to get to there. Any other questions? Seeing none--

**GEIST:** Thank you for your time.

**WAYNE:** Thank you. And that will close the hearing on LB137. And we'll open the hearing-- for those watching at home, we now start the Senator McDonnell show.

**DeKAY:** One bill.

**WAYNE:** We're going to do a joint hearing on all 75 bills in front of us withhim. No, we'll start the hearing on LB106 and LB107. For those who are here to testify, please listen up. We are, we are using the three-minute light system, but I recognize that you probably are here on both bills. So I am going to let it, I am going to let it go a little over, but I'm going to try to keep it, still, around three minutes. But I won't be as strict with cutting people off, but I will not let it go over four. And so, we will try to maintain, kind of, the timeline. Thank you. With that, you may open. Senator McDonnell.

**McDONNELL:** Thank you, Chairperson Wayne and members of the committee. I'd also thank you for allowing me to, to combine LB106 and LB107 today, with our-- with this hearing. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l. I represent Legislative District 5, south Omaha. I'm here today to present LB106 with AM917, which is currently being handed out, and LB107, two bills that aim to address the rising rates of digital exploitation and enticement of- and sexual abuse, stemming from digital grooming of vulnerable adults and minors. LB106 creates the offense of digital grooming of a vulnerable adult and prohibits the use of electronic communication devices and social media to engage in certain conduct with vulnerable adults. LB107, on the other hand, addresses the digital exploitation, enticement and sexual abuse of minors, through the creation of the offense of digital grooming of a minor. Both builds-- both bills build on current laws outlining the procurement and sharing of child sex abuse materials and aimed to create tools for earlier intervention in the digital grooming process. Our current laws surrounding digital grooming-- digital enticement, were last updated in 2009, leaving room for gaps and many Nebraskans to go unsupported and unprotected. As our digital world was

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adopted-- has adapted and changed over the years, our laws have stayed stagnant. I apologize. Sorry. As our digital world has adapted and changed over the years, our laws have stayed stagnant, leaving vulnerable adults and minors at risk. These bills strengthen current statutes to close those gaps and enable law enforcement to intervene earlier in the grooming process, before sexual violence or exploitation occurs, resulting in less trauma for the intended victims and lower criminal burden for the offenders. Today, you will hear from proponents from law enforcement advocates for digital safety, behavioral health and disability rights, as well as individuals who have lived the experience with digital grooming. I urge you to support LB106 and AM917, LB107 and join the AM917, and join the fight against digital exploitation of vulnerable adults and minors in our state. Here to answer your questions, I'll be here to close. Again, there is a number of people that, that came and I appreciate them, them being here to testify and tell their story.

**WAYNE:** OK. Any questions from the committee? Seeing none--

**McDONNELL:** Thank you.

**WAYNE:** You didn't break the rules. I meant to add to the rules, please silent your watch, too. So, I'll take care of that.

**McDONNELL:** I left my phone over there and brought my watch. I'll leave the watch, next time.

**WAYNE:** Thank you. Will you be-- oh, you'll be here for close. Nevermind.

**McDONNELL:** I'll be here.

**WAYNE:** Yeah.

**McDONNELL:** As you mentioned, I'll be [INAUDIBLE].

**WAYNE:** OK. First proponent. First proponent.

**AMIE KONWINSKI:** Good afternoon. My name is Amie Konwinski, A-m-i-e K-o-n-w-i-n-s-k-i. I'm here today as a digital use expert and the founder and CEO of Smart Gen Society, an Omaha-based, national nonprofit working to protect digital users' rights for safety and privacy in all digital spaces, including social media and interactive gaming. Smart Gen Society, along with our community partners, have spent the past two and a half years researching and developing

anti-digital grooming legislation, known today as LB106 and LB107. We bring you this vital legislation to update current Nebraska laws to reflect modern day technology integration, strengthen current statutes, fill holes for protection in digital spaces and safeguard against sexual violence against minors and vulnerable adults. Digital grooming is the use of a digital device or social media platform to establish an emotional connection with a vulnerable adult or child, with the intent of abuse or exploitation. Grooming is intent to abuse and grooming speech is categorized as solicitation speech and therefore, unprotected under the U.S. Constitution. Imagine your 13-year-old son or daughter receiving this message in their direct messages. Hello, beautiful, heart emoji. I find you very attractive and I'd just like you to be my sugar baby. I can give you a weekly allowance and send you gifts, just basically paying for your time and spoiling you. This message was received by my minor daughter. In Nebraska, between 50 and 70 percent of students surveyed reported receiving offers of financial gain, in exchange for connecting with strangers online. The easy accessibility to children in digital spaces has never been as simple as it is today, with 56 percent of five-year-olds now having their own digital device and the average age to receive a smartphone is just 10.3. Predators online have become emboldened by the easy accessibility to literally millions of minors known through such social media and accessibility to alarming rates of child sexual abuse material. This accessibility extends to all hours of the day and night, with 85 percent of Nebraskan minors surveyed reporting keeping their smart devices in their rooms at night. It takes, on average, less than 10 minutes for an online predator to make a conversation sexualized and to ask for nude images. For law enforcement, unless images received meets the threshold of child pornography, being pictures of genitals, anus or sexual acts, officers are unable to intervene and grooming process and have to wait till greater harm has been perpetrated on the victim. Under current laws, digital predators are aware of how far they can push the conversation and request images cataloged as child erotica, including images of breasts, buttocks, bellies and feet, which do not fall under child pornography but is sexually gratifying for the predator. For victims of digital grooming, the loss of innocence, vacant expressions and persistent fear of who has seen my images, remains a relentless presence in their lives for years. This committee can make a priority to protect minors and vulnerable adults in digital spaces. And we ask you to vote yes to move these bills onto the floor. Thank you. And I'd be happy to take your questions.

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**WAYNE:** Any questions? Senator Holdcroft.

**HOLDCROFT:** Yes, Thank you. Thank you, Chairman Wayne. I believe your organization has a program that goes out to schools? Is that correct?

**AMIE KONWINSKI:** That is correct.

**HOLDCROFT:** Can you tell us more about that, please?

**AMIE KONWINSKI:** Yes. We offer, offer proactive education to make sure students do their own first lines of self-defense. We talk with students, parents and educators, on making sure they know how to be safe, private and on brand on their digital spaces. So far, in the-- short of seven years, we've spoken to over 70,000 students and parents in 16 states.

**HOLDCROFT:** Thank you.

**WAYNE:** Any other questions? Seeing none, thank you for being here.

**AMIE KONWINSKI:** Thank you.

**WAYNE:** Next Proponent. Welcome.

**GRACE CORRIGAN:** Good afternoon. My name is Grace Corrigan, G-r-a-c-e C-o-r-r-i-g-a-n. LB106 and LB107, may just seem like numbers on a piece of paper, but to me, it is so much more than that. Adults are people that we, as kids, should be able to look up to. Adults should be role models and people we can trust to look out for us and have our best interests at heart. Unfortunately, this is not the case for many kids and this was certainly, certainly not the case for me. One of the most important adults to young athletes are their coaches. Kids put so much trust in their coaches in guiding them and help them excel at their sport. They have dreams that they know their coach will help them achieve. I trusted my soccer coach with everything in me and put my athletic career in his hands. I felt that I could go to him for anything and everything, but what I didn't know was that the whole time, he was abusing the relationship. I was taken advantage of and I didn't realize what was happening. I was 13 years old and I was terrified. It is now unimaginable to me how easily this happened. If it can happen to me, it can happen to anyone. His process of luring me and using Snapchat to communicate was his way of getting closer to me. He was grooming me for something more. I spent countless sleepless nights crying and thinking I was stupid. How could I have not caught this and realized how wrong it was for the coach I trusted to abuse

our relationships? I was captain of his team and he knew of my goal to play college soccer. He would often make comments about my body and start calling me his hot, sexy favorite. He told me not to tell anyone because he knew it was wrong. I kept quiet because I was afraid. Things continued to get worse. He would talk about my body and he would ask for me to send him pictures. His comments started to become sexual in nature and he would tell me how much he loved me. Luckily, one of my friends reported it and we got the police involved. Unfortunately, because this was all through Snapchat, most of the evidence was gone. The kissy faces, the sexual comments, the harassment, vanished like it never happened. He knew what he was doing. Gratefully, during his, during his questioning, he admitted he had sexual intentions with me. This statement ultimately led him to prison. What would, what would happen if he never said these words? I'm 16 now. Would he have taken this a step further? These thoughts are constantly at the back of my mind. There would have been nothing to stop him. He would continue on with these behaviors. I'm here today to not only share my story, but to advocate for those who were never heard. After my story came out, it was unreal to me how many others could relate. Hearing their stories, knowing that I was not the only one, made me realize this needs to be stopped. Predators are taking advantage of modern technology. They know they can get away with it. And there weren't many laws to protect me online when I was 13. Now, three years later, imagine how many more stories, how many more girls have been affected? Still nothing to protect us. Please vote for LB106 and LB107. Help protect your children. It's getting worse day by day. End digital grooming now, before it affects your own family. Thank you for your time.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here today. Next proponent.

**KATIE THOMPSON:** Good afternoon. My name is Katie Thompson, K-a-t-i-e T-h-o-m-p-s-o-n. I'm here to support LB106 and LB107. I do not represent an organization. Today, I'm here as a parent. I stand before you as a voice for my daughter, a voice for my six children and a voice for those who are never heard. Even at a young age, Grace loved the game of soccer. At 13, it was clear she had a talent for the game as well. Her dream was to play college soccer. That year, she tried out for a named team. The coach of this team trained many female, female athletes who went on to play at a collegiate level. What a perfect opportunity for Grace. Coach was a man who loved the game of soccer and wanted to help young female athletes achieve their dreams. We trusted him. Grace trusted him. Unfortunately, our perception was

completely wrong. He had other intentions with my 13-year-old daughter and coaching soccer was not one of them. I was sitting on my front porch enjoying the beautiful weather on the evening I received the phone call. The photos are of your daughter. Those are the only words I remember hearing. Why did Coach have countless pictures of Grace on his phone? So many questions ran through my head, but what came to follow was something I would never be prepared for. In the few snapshots that Grace saved. Coach referred to her as his hot, sexy favorite. He told her that he loved her and not to tell anyone. He told her he wished he was the popsicle she was sucking on. And according to our laws, he did nothing wrong. After the arrest, Coach admitted he had sexual intentions with Grace. It was only because of this statement he will spend the next 5-8 years in prison. I can't bear to think of what would have happened if he did not self-incriminate that day. His messages would have continued. How far would he have gone? Who would be his next victim? We all know that our laws have not caught up with the fast changing digital world. According to the National Center for Missing and Exploited Children, online enticement saw 97.5 percent rise in 2020. Additionally, we have seen numerous examples of what digital grooming can lead to. How many more stories does there need to be? I never thought this would have happened to my daughter, but the truth is it can happen to anyone. What if the girl in the photo was your own daughter? Would you support this bill if the story was about your grandchild? Can you sleep at night, knowing that you voted against a bill that would protect her or protect him? Thank you for letting me share my story. My daughter is not a victim. She is an advocate. And today, we stand together to protect children across the state, including yours.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here. Next proponent.

**RUSSELL COOK:** Good afternoon. I am Russell Cook, R-u-s-s-e-l-l C-o-o-k. I am a detective with the Blair Police Department. I've been in law enforcement for 25 years, with 15 of those as, as a detective. I strongly support the proposed statutes to criminalize the digital grooming of minors and vulnerable adults for the prevention of sexual abuse and exploitation. Currently, the laws that attempt to address the type of behavior within Nebraska state statutes in the criminal-- are the criminal child enticement law and enticement by electronic communication. Criminal child enticement has established that adults who attempt to normally solicit, coax, entice or lure a child under the age of 14 into any vehicle or any place, with the intent to seclude the child from his or her parent guardian or other legal

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custodian or the general public. Enticement by electronic communication establishes that if an adult knowingly and intentionally utilizes an electronic communication device to contact a child under the age of 16, by transmitting indecent, lewd, lascivious or obscene language, writing or sound or disseminates any visual depiction of sexually explicit conduct. Both of these offenses have been classified as felonies. What these laws don't address is contact between an adult and a minor that would manipulate the minor into sexual contact. I have investigated instances where an adult has had contact with a minor through their school or school function or even places of employment. When, when these predators contact the juvenile, they begin to manipulate them with the goal of future sexual contact. In some of these cases, the predator has not sent obscene language or photos to the victim or even tried to lure or separate them from their parents or guardian, but the goal is the same: sexual contact. Predators contact juveniles through social media and they begin a chat. The chat between them seems unthreatening and attempts to establish a personal relationship with the juvenile. Once the predator establishes the relationship, the chance of the juvenile becoming a victim is greatly increased. If law enforcement receives notice of this activity, the current law does not allow for any type of, of enforcement for this behavior. To clarify, adults may have contact with the juvenile, even through social media outlets that are not predatory in nature. An example might be a relative, school official or family friend having a conversation with a juvenile. When this becomes overtly sexual or the adult makes some mundane things explicit, they have victimized the child. Currently, there is no evidence that pedophilia can be cured. Therefore, the chance of recidivism in these types of crimes are greater than others. The safety of our children is paramount to our society and I feel that the sex offender registry should be a part of the law for these reasons. I strongly support the safety of the children. Thank you for your consideration.

**WAYNE:** Any questions? Senator DeKay.

**DeKAY:** Thank you. Maybe I should have asked somebody before or somebody after you, but I'm asking you. What's the difference between a Class IIIA felony and a Class IV felony, the difference in these two?

**RUSSELL COOK:** I don't really have the answer for that, Senator. It's a difference in the penalties.

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**DeKAY:** I will ask somebody, but just so it's going forward, I want to have that question [INAUDIBLE]. Thank you.

**WAYNE:** Any other questions? Seeing none, thank you for being here.

**RUSSELL COOK:** Thank you.

**WAYNE:** Next proponent. Welcome.

**JULIA HEVENSTREIT:** Thank you. Good afternoon, Senator and the rest of the committee. My name is Julia Hevenstreit, J-u-l-i-a H-e-v-e-n-s-t-r-e-i-t, and I'm here today to testify in support of LB106 and LB107 on behalf of the Kim Foundation and the Nebraska Association for Behavioral Health Organizations, otherwise known as NABHO. We all use technology every day. It has benefited our lives in a number of ways. However, as time has evolved, we have seen technology be used in ways that can have a very detrimental effect on our youth and vulnerable adults. LB106 and LB107 will help negate some of these negative effects. The Kim Foundation's mission is to serve as a supportive resource and compassionate voice for lives touched by mental illness and suicide. Our vision is a community free of suicide that embraces the importance of quality mental health care and services and prevention. We know through research and everyday practice that technology has detrimentally impacted the mental health of many community members and sadly, led to suicide deaths in some cases. The Kim Foundation partners with the Omaha Police Department, Sarpy County Sheriff's and Douglas County Sheriff's Office on a multi-pronged approach to suicide pre and postvention in our community. The relevant component of this partnership here, is that we receive every report on any suicide-related death and we use these reports to collect data that can be used comparatively around gender, age, zip code and method of death. We also often receive narrative information from law enforcement that contains more context to the situation surrounding the death. We don't have exact comparative data on the percentage of deaths that had some component that involved technology or social media. But I've been leading this effort since 2015 and I can tell you, over the last seven-plus years, there's been several cases where this has been, unfortunately, a, a component of the death. Seven other states have already passed similar legislation to these bills and passing LB106 and LB107 will allow for Nebraska to join these states and lead the way in keeping our youth and vulnerable adult population safe from the harm of online grooming and sexual predators. Passing these bills will also allow us to evolve our statutory law to the current times, around modern-day technology

integration. We know that the trauma many survivors of crimes such as these face can lead to years of, years of PTSD and other, other mental health conditions. We can help to eliminate those struggles for many and possibly, even save a life from suicide by intervening early-- earlier, deterring offenders by strengthening statutes and preventing potential sexual abuse and online extortion. NABHO and the Kim Foundation support LB106 and LB107 because they promote sound policy that keep our youth and vulnerable adults safe from predators, by providing them the safe, online space they deserve. We encourage each of you to vote in favor of passing LB106 and LB107 out of committee. And I just want to thank you today. And I'm happy to take any questions.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**JULIA HEVENSTREIT:** Thank you.

**WAYNE:** Next proponent. Welcome.

**DENISE GEHRINGER:** Hello. Good afternoon, Senator Wayne and members of the Judicial, Judicial Committee [SIC]. My name is Denise Gehringer, D-e-n-i-s-e G-e-h-r-i-n-g-e-r. I'm the executive director of Sheltering Tree, which builds and operates affordable apartments for adults with developmental disabilities in the metro Omaha area. I'm also the president of the Down Syndrome Alliance of the Midlands and involved with several disability organizations, both statewide and nationally. My most important role, however, is a mom to my 27-year-old son with Down's Syndrome. And because of all of these roles, I bring to the table lived experience supporting adults with developmental disabilities and I know, firsthand, how technology has elevated their lives and at the same time, put them in danger. The advancements in technology have been very empowering for adults with developmental disabilities. In addition to offering them tools and applications to navigate their world independently, sometimes even filling the gap in costly disability support services, it has also provided them access to social connections that are most missing in their lives. This access also opens the door for predators who seek to groom, manipulate and exploit vulnerable adults into easy prey. This legislation, LB106 and LB107, is desperately needed so that an effective deterrent can be leveraged to put a halt to online digital grooming. Stopping the grooming before it results in a crime will prevent long-term effects and trauma that further burden the lives of vulnerable adults. These two bills update current laws that are

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outdated and bring them up to speed with modern-day technology. Let me share with you a story of an adult with developmental disabilities who was targeted, easily manipulated and whose life was greatly impacted by the online predator. This adult, who has a developmental disability, lived independently in his own apartment, using technology as some of his main supports. As is typical with many vulnerable adults, loneliness leads him to unknowingly connect with a predator online. The predator slowly and methodically worked to gain the trust of vulnerable adult and worked to emotionally connect them to the predator. This predator convinced the vulnerable adult to sell his possessions and put the proceeds of those sales on a Visa gift cards, which were then gifted to the predator. This predator even had the audacity to convince the vulnerable adult to attempt to change his automatic payroll deposit to the predator's account. Because of a good Samaritan in the HR department, this transaction was not made. When this grooming was finally discovered, the guardians of the vulnerable adult alerted both law enforcement and the Adult Protective Service. Because no crime was committed, nothing could be done and the predator was left to go on to target others. And he did continue to attempt to connect with this vulnerable adult to further manipulate them. This vulnerable adult's life was dramatically changed. Their independence has been lost and now, they are significantly more isolated. They now have the added burden of this trauma and require more support than they did prior to this grooming. Thankfully, this grooming situation did not result in physical harm, but it could have very easily gone in that direction, as it has in many similar cases, resulting in sexual exploitation and physical assault. I'm asking you to see the importance of bringing current laws up to date. Move LB106 and LB107 to General File, to put a halt to the targeting of children and vulnerable adult citizens online, in Nebraska. It's the responsible thing to do. And with that, I would-- happy to answer any questions.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here. Next proponent. Next proponent. Next proponent. Welcome. Welcome back.

**LINDA VERMOOTEN:** Thank you, Senator. Good afternoon, Senators and committee. Thank you for the time to speak to you today. I'm Dr. Linda Vermooten, L-i-n-d-a V-e-r-m-o-o-t-e-n. You've heard some of the bravest people testify before you today, sharing their stories and the stories of their family. These are some of what I call my heroes. I have more than 26 years of experience in clinical practice, with a post-Master's in marriage and family, doctorate in clinical psychology. My specialty is working with childhood sexual abuse and

rape. That's a heavy load to carry, but someone has to come alongside these people and help them pick up the pieces. As I look around us today, we see this old building. I've had the privilege of going up to one of the senators' offices, up on the top floor and I see all the paint peeling off the walls and the age. And as I look at our laws, I think some of our laws reflect our building. They are old, they are out of date, they haven't stayed up with the current times. So I want to thank Senator McDonnell for bringing this legislation forward, because children are our most vulnerable and vulnerable adults are right there, along with them. They are susceptible. We teach our children to trust. We don't want to teach our children to be fearful of everyone around them, so we teach them to be selectively trusting. These people come online and pretend to be their friend and befriend them. Or it's somebody that they know, as we heard the testimony of, today, from one of the former testifiers, a coach. A coach, a parent, an uncle, a babysitter, a grandparent, a stranger, these are all stories of individuals that have sat with me that I've had the privilege of working with. Their lives are devastated. They are left to pick up the pieces. It takes a huge amount of courage to face that. What now, with these explicit photos that are being posted out on the web? They have no control over, they can never get them back. The shame, the anger, the pain. So many of these individuals are highly suicidal because they feel like they can't go on with their lives. They can't pick up the pieces. They are no longer a person, but they are a thing, because they have been systematically groomed by someone for their own pleasure. As we have heard, seven states have already advanced bills along these lines. I would ask, as we look at this bill, that we do not be one of the last states. So often, Nebraska, our great state, is last in enacting legislation. When you have someone who is intentional about grooming somebody, they are very systematic. They have a plan and they are smart. They know how to sidestep through some of the loops that currently exist. And I believe this law will help tighten some of those loops and hold them accountable, because if they know that there is accountability, the last place they want to land is in prison. Because there is a reputation of what will happen to somebody that abuses a child, a vulnerable person, in prison, so that deters them, if they know that they get caught. I would strongly urge that we pass this bill forward to the Legislature for debate and a vote. Thank you so much for your time.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here. Next proponent. Proponent. Welcome.

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**HANNAH VANKAT:** Thank you and good afternoon. My name is Hannah Vankat, H-a-n-n-a-h V-a-n-k-a-t, and I am here representing Nebraska Department of Health and Human Services, Boys Town, Lutheran Family Services, Nebraska State Soccer Association and Respect. These organizations were not able to be physically present today, but have submitted letters of support and would like to be considered proponents of LB106 and LB107. Attached to this testimony are the letters of support, submitted as exhibits. I am happy to answer any questions I am able to or I can follow up with any of the listed organizations, to get answers to questions I may not know today. Thank you for your time and consideration. And on behalf of these organizations, we would love to see you all vote yes to moving these bills to the floor for further consideration.

**WAYNE:** Any questions from the committee? Thank you for being here. Any other proponents? Proponents, proponents? Any opponents, opponents?

**SPIKE EICKHOLT:** I think-- sorry. Sorry. It's my first time here. This is LB107. This is LB106. Sorry, I've got two handouts. I didn't realize the bills were going to be combined. My name is Spike Eickholt, S-p-i-k-e, last name is E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to both of the bills. You've got my written testimony for both bills. I'll try to summarize the high-- the sort of the bigger points for both bills. First, on LB106, we would submit that existing law does provide sanctions for some of the conduct that the bill is intended to target. I did meet with or visit with some of the people from Smart Gen Society last fall. They did reach out to me. And to their credit, they did hear me out from our Association's concerns that we would have with the bills that they were planning on bringing. And I did raise some of the points with them. And to their credit, they did incorporate some of the things that I did point out. So in some respects, they made these bills for us a little more narrow. But on both of the bills, we would submit that much of the content they describe here today that they've talked about is already criminalized. If you look at my letter on LB106, it lists some of the specific crimes that apply. One point on LB106, the venue provision is unnecessary. And I've stapled a statute that Senator Geist actually passed a couple of years ago that provided for a venue when you use electronic communication device in any sort of crime. So putting it in the body of a, of a statute as an element of crime is just problematic and really unnecessary. On LB107, where most of the testimony has been, we already have a number of crimes relating to online enticement. It's not called grooming or digital grooming or anything

like that, but it's called online enticement, enticement by a child by electronic communication device. They have pretty serious felonies already. I've only attached one of those statutes, because there's so many of them, to my letter. But I would submit that this-- not only is this proposal in LB107 unnecessary, but it's going to recriminalize existing criminal conduct. It's going to provide for a lesser penalty than currently exist in the law, which is going to cause some confusion. And it's even more confusing for purposes of double jeopardy, lesser included offenses and that sort of thing. If you look at the attached Statute 28-320.02, and you look at sexual assault, use of electronic communication device, no persons shall knowingly solicit, coax, entice or lure any child 16 years of age or younger or a police officer pretending to be such a child by means of electronic communication device. And then, they reference a whole series of different crimes that if a person uses electronic communication device to commit, they're going to be prosecuted. One of the crimes listed is the very crime this bill amends, so it's just sort of circular in how this is going to be prosecuted. Violation of this current, of this current existing law is punishable as a ID felony, which is a mandatory minimum of 3-50 years imprisonment. The bill proposes to make it a Class IV felony, which is 0-2 years imprisonment. To answer your question, Senator DeKay, a Class IIIA felony is 0-3 years imprisonment, up to a \$10,000 fine and 9-18 months post-release supervision. I thought it was a little bit frustrating that some of the proponents are arguing the penalties are not severe enough and they don't even know what the penalties are, proposed in the bill. And if anything, there are lesser penalties than we have right now, which you might think, well, why wouldn't we support it then? And, you know, we practice in this area. This is bringing uncertainty, I would submit, to something that's certainty. These convictions are common. People said-- the people know what the law are now. We got a perp-- we got to catch the perpetrators. There was a recent case, just three days ago, where an Omaha police officer was caught up in this thing. There's a retired or former state trooper is also similarly prosecuted under existing law. If law enforcement can't somehow beat the system, I don't think that that's-- that people are that sophisticated. I'll answer any questions if you have any.

**WAYNE:** Any questions from the committee, Senator DeBoer.

**DeBOER:** So you mentioned the uncertainty to certainty. Can you elaborate on that concept?

**SPIKE EICKHOLT:** Well, look at-- if you look at the-- I'm talking about LB107, primarily. If you look at the statute that I stapled on there, you can see how some crimes can be prosecuted. But if you look at what LB107 proposes, they create this crime called offense of digital grooming. If they are 19 years of age or older and they knowingly and intentionally use an electronic communication device or social media-- and I don't quite know how you would do that outside of an electronic communication device-- to communicate with child, 16 years of age or under, with the intent to-- and then it lists three different general ways you can do it. The sub one that's on page two of LB107, lines 21-22, engage in sexual contact or sexual penetration, that, arguably, is already criminalized in 3-- 28-320.02. But the part that's not criminalized is this catch all: regardless of when in the child life the actual sexual contact or sexual penetration would take place. That's new. And that's problematic. For instance, you could have a 19-year-old senior texting a 15-year-old freshman or middle school girl, asking her out, saying, I like you. You're attractive. Nothing happens until she turns 16, a couple of years later. They're intimate. This is the, this is-- the crime has been committed then, according to this, this bill's proposal. Because it doesn't matter when the sexual contact or sexual penetration takes place. The second part is the, the sub 2, which I think is also confusing, is lines 23-24, receive a visual depiction of the child for purposes of sexual gratification.

**DeBOER:** So, so here's-- the question with how-- these are intentions that we're trying to prove. Right?

**SPIKE EICKHOLT:** Right. That's right.

**DeBOER:** So how do we prove these intentions? I mean. If I'm a prosecutor and I'm trying to-- I mean, I wish there had been a prosecutor here. Usually you can't throw a dead cat without finding a prosecutor in here. And I don't know where they are when we need them.

**WAYNE:** This is, this is an enhancement. They, they all support this.

**DeBOER:** Oh. Well, I wish we had one, because I would like to ask how you would prove this. And if this is going to be something that they can show the intent to-- I mean, how do you in-- show intent to receive a visual depiction for purposes of sexual gratification?

**SPIKE EICKHOLT:** Well, that's-- I mean, I'll take my stab at it if you're asking.

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**DeBOER:** Yeah.

**SPIKE EICKHOLT:** Because if you look-- it says a visual depiction of the child. If you look at our current child pornography statutes, if you have anything that depicts a child's genitalia, [INAUDIBLE] in a sexual position or whatever, it doesn't matter. You have it, you're, you're in trouble. It doesn't matter why you had it--

**DeBOER:** Right.

**SPIKE EICKHOLT:** --what you intended or knowing or whatever. This requires not only the proof of knowingly and intentionally, but it simply says any depiction. That's not necessarily sexualized in and of itself, so I don't know how you prove that. It's very subjective, unless somebody confesses to it all. And if they do, they've got-- they've confessed to a whole bunch of other kinds already.

**DeBOER:** So if I've got-- so if we pass this, whatever and I've got, as a prosecutor, I've got this one sitting out there, but I'm going to do it under the old ones, because they're obviously easier to prove. Does this one affect-- I, I just don't know. I haven't practiced-- I mean, this--

**SPIKE EICKHOLT:** One way it could affect and perhaps I shouldn't share it, but if I'm defending somebody who's charged under the old statute, this new statute passes. If the facts are right, I might ask for a lesser-included offense for this, asking that the jury be instructed that you can find the defendant guilty of the big original crime or if you don't think somehow they committed that, you may find him guilty of this lesser, newer crime. They won't explain it that way. I'm certainly going to want it. I'm certainly going to argue for it, because it exposes my guy from a mandatory minimum of 3-50 to 0-2 years, which, I have to confess, is not necessarily on--

**DeBOER:** I don't think this is the intention--

**SPIKE EICKHOLT:** No.

**DeBOER:** --of the folks who wrote this bill.

**SPIKE EICKHOLT:** No.

**DeBOER:** I, I think it's the opposite of the intention of the folks who wrote this bill.

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**SPIKE EICKHOLT:** I think you're probably right.

**DeBOER:** OK. Thanks.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here. Next opponent. Welcome.

**JEANIE MEZGER:** My name is Jeanie Mezger, J-e-a-n-i-e M-e-z-g-e-r. I advocate for people, for people who are on the sex offender registry and for their families. A name on the registry always affects more than that one person. It affects spouses and children, parents and siblings. It can isolate the whole family and keep them mired in poverty, by keeping the registrant unemployed or underemployed. As a mother, I am sympathetic to parents who wonder what awful stuff might be happening on a child's phone and I hope we can all agree that prevention ought to be our goal. Let's find ways to block paths that lead to molestation. Prevention would mean fewer people suffering as a victim of a sex crime and it would also mean that fewer people are added to the sex offense registry. When I first heard about this legislation, I was told that it was intended to be preventive, to stop the grooming before any molestation or assaults happened. The story used to show how bad grooming can be and why this bill is needed was about the Gretna soccer coach, who sent sexually explicit texts to one of his players. That coach is now doing 5-8 years in prison on a conviction for child enticement using an electronic communication device, so it seems that there already is a charge for that situation. Effective prevention measures would include a way for someone to ask for and get help before anything illegal happens. Prevention would mean educating adults and minors about how to shut down inappropriate social media conversations. It would mean a way to report and deal with early signs of a questionable text, without the stigma that shames people into not asking for help. This bill does nothing preventive. What it would do is put somebody on the sex offense registry. And I'm always opposed to that. The next arrest for a sex offense in your community is most likely to be of someone not on the registry and quite possibly, of someone who's a trusted member of the community. Listing even more people is not a preventive measure. It's easier to punish someone after harm is done, but it's far better to prevent the harm. I urge you to vote against this bill. Thank you. If you have any questions?

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here. Next opponent, opponent. Anybody testifying in the neutral capacity, neutral capacity?

**ERIN FEICHTINGER:** I'm almost never neutral. This is new for me. Chairperson Wayne, members of the Judiciary Committee, my name is Erin Feichtinger, E-r-i-n F-e-i-c-h-t-i-n-g-e-r, and I am the policy director for the Women's Fund of Omaha. We believe in doing all we can to prevent and end sexual assault and sex trafficking. We are not opposed to the intention of these bills and we wanted to take the opportunity to highlight just some of the concerns we have with the timing and approach of these bills in our current political climate. Grooming has a very specific definition in the context of child sexual abuse and trafficking, which these bills do take into account. However, this term has been used both nationally and very recently, in this state, in very harmful and damaging ways against the LGBTQ-plus community, as well as against advocates such as ourselves, for those advocating for teaching comprehensive sex education. The goal of this legislation is to prevent child sexual abuse and that is a noble goal. And it does not happen by just providing new criminal penalties, while, at the same time, introducing bills that would restrict the ability of youth to empower and protect themselves from abuse. Research suggests that one of the most effective tools to reduce child sexual abuse and trafficking is to provide age appropriate, comprehensive health education, including for young children, which is precisely what has been labeled as grooming across the country. We could do both. We would support doing both, but we are not doing both right now. We have some concerns, given the current heated political climate, here in Nebraska, around both comprehensive sex education and the LGBTQ-plus community, that those who provide resources for either could later be subject to investigation, if not the penalties provided for in these bills, exactly that question of intention that you had brought up earlier, Senator DeBoer. Discouraging age appropriate sex education as well as misinformed and misapplied rhetoric that confuses the public's understanding about what grooming actually is in this context, could ultimately harm legitimate efforts to prevent child sexual abuse and trafficking. Once again, we are not opposed to the intentions of these bills nor obviously, the effort to end child sexual abuse and trafficking, which is why we have consistently followed research and evidence-based practices such as supporting access to comprehensive health education. We have been called groomers as a result. We continue to support efforts to end child sexual abuse and trafficking. If this committee chooses to advance LB106 and LB107, we would encourage monitoring how grooming is defined and applied as it is implemented and to be mindful how this statute could be manipulated later down the road. We also encourage continued efforts to empower young people with the tools and information they need to

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make healthy choices both on and offline. And I'm happy to answer any questions to the best of my ability.

**WAYNE:** Senator DeKay.

**DeKAY:** Thank you. Is there a, a different title we could use, so that we're in diff-- differentiate between the two sectors that you were talking about, so the intent of these bills was not lost with the events that led to this point now?

**ERIN FEICHTINGER:** Yeah. I think that's a great question. It's certainly the term and again, these bills taken to apply the appropriate use of the word grooming and what that means in this context. We would also just be a little concerned about establishing, you know, trying to prove intention makes it a little difficult, like if a student is, let's say, asking a question of Planned Parenthood. Could the person on the other side of that providing, you know, information about sex or birth control, could they be put under investigation for intending to provide sexual materials? You have a bill tomorrow in this committee that is going to further define obscenity statutes and could put other folks at risk, too. So I, I think it's a great question. And I think it's one, again, that we can keep working on together. I know that was a roundabout way of answering your question and I apologize, Senator.

**DeKAY:** Not a problem. With this-- with these bills coming forward, for me, it's-- I want to be able to understand that we can get to the point that these kids--

**ERIN FEICHTINGER:** Right.

**DeKAY:** --being victims that they are, these things-- the people that perpetrated these crimes are handled in the appropriate manner, so-- and if we got to change titles or whatever we need to do to get to that point, we need to talk about it.

**ERIN FEICHTINGER:** And I think, again, it's a, it's a noble goal. It's an incredibly important conversation to continue having. I'm a parent. My three year old only has an iPad with PBS Kids on it. But you know, but, but these things do scare me personally, as well, so--

**DeKAY:** Thank you.

**ERIN FEICHTINGER:** --I would love to keep working on it.

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**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here. Next neutral testifier. Seeing none, as Senator McDonnell comes up to close, we had 24 letters of support for LB106, 21 in-- I'm sorry, 24 letters for the record, 21 in support, 3 in opposition. For LB107, we had 94 letters of record, 91 in support and 3 in opposition. Senator McDonnell, to close.

**McDONNELL:** Thank you, Chairman Wayne. To address Senator DeKay's question about-- if you looked at the amendment I handed out, it would make it a Class IV, both LB106 and LB107, at 0-2 with one year supervision-- post-supervision. So if-- I, I think we probably all know a family member, a friend, a neighbor, that this is either-- this is happening to, either as a, as a minor or a vulnerable adult. I'm here to try to help stop that and I believe everyone would agree on that. Now, how we get there, what we can do as, as preventive means and then what we do with the punishment, I'm open to working with this committee. But the goal is to stop the digital grooming that's going on every day, again, with our family members, friends and neighbors. Can I-- I'm here to answer any questions.

**WAYNE:** Any questions from the committee? Seeing none, thank you. And that will close the hearing on LB106 and LB107. Welcome. We'll open the hearing on LB619, Senator McDonnell, to open.

**McDONNELL:** Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l. I represent Legislative District 5, south Omaha. LB619 would expand the offense of assault to include public transportation drivers. The bill was presented to be-- to me, by the men and women of the-- the drivers that drive our buses in the metro Omaha transit area and belong to the Transit-- Transport Workers Union, Local 223. There have been numerous instances of horrible assaults on these drivers while the scope and the, the basic duties of his or her daily employment. In these examples, there is no provocation. These men and women are simply doing their jobs and providing a service to citizens of our community. You will note this bill appears to make numerous changes in statute. This was done in-- at the bill's drafters' request to clean up this section of law, because the legislation-- but has added certain provisions to the section of law over the years. These professions, these professions include healthcare professionals, first responders, probation officers, police officers, correctional officers and firefighters. I have provided a memo to members of the committee that further elaborates on the rationale for these additional changes that provided updated definitions and harmonized the relevant provisions. I introduced legislation similar to LB619 in 2021. The bill was advanced

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to General File and eventually designated a speaker priority bill. Testimony that was shared before the Judiciary Committee two years ago noted, these assaults endured by our community transportation drivers occur on a weekly basis, without fail. Experiences shared by these individuals included being punched, beaten, spit on and one driver even encountered an individual on his bus with a hatchet. The, the men and women who drive these buses and provide this service to our community are sitting ducks in their seats. They are required to focus on the road, the traffic and the pedestrians, all while trying to observe the commuters and activate, and activate on their-- and the activity on their own bus. They have their backs to their passengers and have nothing to protect them, should an incident occur. Furthermore, these, these horrible instances and assaults have taken place for nothing more than a driver requesting a passenger to wear a mask under the mandate or requesting a boarding pass or you to pay a \$1.25 fee. To add even more insult to these assaults and the reason for LB619, these offenders are rarely reprimanded or charged for their actions, because current penalties are taken lightly and have little teeth for prosecutors to pursue. To go one step further, these drivers not only endure these encounters on a weekly basis, they must then return to the same spot during the same route, same route on a timely and routine basis, throughout each day and week. Perpetrators know precisely where to find them to retaliate. As you can imagine, these common threats are beyond concerning and disheartening when a driver begins his or her shift to start their day. An increase in the penalty of an assault on a public transportation driver would send a message to these horrible offenders and actually provide a basis for prosecutors, so the repercussions would be more than a slap on the hand, should someone choose to assault one of these men and women during their scope of their daily job duties, expectations and requirements. I have a couple of people here to share their stories about being assaulted. I'm here to answer any of your questions.

**DeBOER:** Are there any questions for Senator McDonnell? Don't see any at this time.

**McDONNELL:** Thank you.

**DeBOER:** Let's have our first proponent.

**McDONNELL:** Thank you.

**DeBOER:** Welcome.

**RICHARD SCHMELING:** Thank you. My name is Richard Schmeling, R-i-c-h-a-r-d S-c-h-m-e-l-i-n-g. Some of you senators see me all the time when we have bills about railroads in the Transportation Committee, but this one happens to be in front of the Judiciary Committee. I would suggest-- there are some senators that are from rural areas and I would suggest, to those senators, that you've got a dog in the fight with this bill, because not only do we have the large Metro system in Omaha that has many buses and many drivers, the StarTran system in Lincoln, that has over 100 drivers, but I served on a state multimodal task force, several years ago. Out state, in the whole state, there are 54 regional transit providers. These, these people provide van service that comes from, say, for example, Hebron or Fairbury or Norfolk. And in addition, we have, in Norfolk, as Senator DeKay is well aware, we, we established a-- an enhanced public transit system in Norfolk, recently, which, I guess, got some money and it's still going. The-- Scottsbluff recently rehabbed their public transit system within the city. There's a move to do a tri-city public transit system, Grand Island, Kearney and Hastings. So this cuts across the board and it's something of statewide interest. I'm the president of a group called Citizens for Improved, Improved Transit. What we try to do is to promote good public transit throughout the state. That includes public bus systems. As such, quite often I find myself riding the buses, here in Lincoln. I've ridden the Omaha Metro system, also. I have witnessed personally, instances where there have been verbal assaults and abuse of bus drivers. Here in Lincoln, we had a problem with hiring bus drivers and we had to cut back service. And Liz Elliott is here and I'm sure she's going to elaborate a little bit. But one of the things that could give you pause to consider is a physical danger or a verbal assault. And so, I urge you to pass this bill, put it into effect and hopefully, that will mean that the drivers are safer and it will encourage people to drive public transit lines. And I see my time is over. So I guess I'll defer to the Vice Chairman and see if there are any questions.

**DeBOER:** Are there any questions? Senator McKinney.

**McKINNEY:** Thank you, Senator DeBoer. Thank you for your testimony. What do-- what does-- well, are they, in Lincoln, at least, are they doing anything within the transit authority to protect drivers?

**RICHARD SCHMELING:** All right. I, I will answer that by indicating that StarTran has an arrangement with the Lincoln Police Department. If a driver is being assaulted or there is a problem on the bus, the driver can call dispatch. Dispatch then calls LPD and they'll send an officer

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or cruiser to meet the bus on the route. Unfortunately, that sometimes takes 10 or 15 minutes for that to happen. LPD does not have resources to put officers on every bus, on every route, here in Lincoln. But there are some procedures in place and--

**McKINNEY:** I guess my, my question and you kind of get into where I will hit, you're saying it takes 10-15 minutes for an officer to arrive.

**RICHARD SCHMELING:** It, it could be less if it's closer to downtown, but in the outlying areas, it could be 10-15.

**McKINNEY:** But also, assault is already a crime.

**RICHARD SCHMELING:** Yes.

**McKINNEY:** It's-- already could be a felony.

**RICHARD SCHMELING:** Yes.

**McKINNEY:** What is the transit authority, authority doing to alert rough, rough riders that, if you assault a driver, it is a crime?

**RICHARD SCHMELING:** OK. There are a number of ways to do this. Currently, there's a StarTran website.

**McKINNEY:** No, what are they doing on the buses? So--

**RICHARD SCHMELING:** On the bus itself?

**McKINNEY:** --do they have signs saying if you assault a driver, it's this crime?

**RICHARD SCHMELING:** I don't think there's one that's that specific, Senator.

**McKINNEY:** Why not?

**RICHARD SCHMELING:** I-- they do have rules of conduct for passengers. We have a new system here in Lincoln, which has just gone into effect, where there's a television screen on each bus. And they can put a message on that television screen, saying that assaulting a driver or having an altercation with the driver is a crime, with a penalty of.

**McKINNEY:** Because the last time this bill came forward, it was pretty much said that the transit authority, at least in Omaha, wasn't doing

what they were supposed to do. Law enforcement wasn't doing their job and the county attorney wasn't doing their job. So what I don't understand is if-- even if we increase the penalty, what guarantee that-- do we have that the transit authority would do their job, the police would do their, would do their job and the county attorney would do their job? All we're doing is increasing penalties on, more than likely, individuals that aren't in the best financial situation or anything like that. And they may have mental health or substance abuse issues. And I'm not excusing their conduct, but what I'm saying is, just in- increasing penalties to increase penalties may not even get to what you want to do, because these people, more than likely, don't even know that-- it is-- they don't even know-- necessarily know that enhanced penalty would be a thing. And when currently, it's already a-- could be a felony if I punch you if I'm riding a bus. So I don't fully grasp why we need an increased penalty, when it-- when, when I already could get a felony if I punch you in the face.

**RICHARD SCHMELING:** All right. Well, let, let me, first of all, answer you this way. Because of the Americans with Disabilities Act, we have to, as a transit system here in Lincoln and elsewhere, we have to pretty much take everybody who pays the fare. Then, if they misbehave, they can be taken off the bus. But if you have a penalty that's serious enough and it's well publicized, it may deter people from doing that. We, we have one driver, here in Lincoln, that I'm aware of and he was punched. And he ended up going to the hospital. And, you know, if, if you put these-- a lot of these people up for a while, they aren't going to be getting back on the bus [INAUDIBLE].

**McKINNEY:** But that goes back to my point.

**RICHARD SCHMELING:** Yeah.

**McKINNEY:** If I already can get a felony for punching you in the face, why isn't the police, the transit authority and the county attorney doing more outreach to tell people, if you punch a bus driver, you get charged with a felony. You're saying that increasing this will increase the out-- the, the marketing that it's a problem. It's already a problem and that it already could be a felony, so why aren't they doing their job, instead of having Senator McDonnell come every year to increase the penalty, when in reality, it's already a felony? You can already get charged with a felony for punching, spitting on and kicking a bus driver.

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**RICHARD SCHMELING:** All right. I'm going to defer some of this to Liz Elliott, that I'm sure is here to testify. And she may be able to answer your questions. From my perspective as a rider, it's very disturbing. And I was involved in an altercation personally, where a drunken passenger was verbally assaulting the driver. And I took it upon myself to get that person off the bus. As a rider, I don't want this happening on the buses. I want to ride and have a nice peaceful ride and not see confrontation. So--

**McKINNEY:** And--

**RICHARD SCHMELING:** --it-- it's a real important public issue. And there are-- there's got to be some way of presenting it. I'll defer to Liz. Maybe she can answer thoughts, from the standpoint of StarTran. I don't know if anyone is here from the Omaha system, but perhaps, they have their own procedures in place, that they could comment.

**McKINNEY:** And I, and I understand riders want safety and drivers want safety and I'm fully in agreement with that. What I'm saying is the individuals that you're trying to target, that is going to be targeted in this field, currently, can be charged with a felony for assault. And currently, there is no outreach from police, county attorneys or the transit authority to alert riders that if you assault a driver, you can be charged with a felony. And that is the problem, is-- it's like we're skipping a step. The transit authority isn't taking the initiative to alert the riders that it could potentially be a felony, but they, but they would rather come introduce a bill to increase a, a crime, when they're, they're not even doing their job. And that's why my issue. My issue isn't with you or Senator McDonnell, it's really with the police, the county attorney and the transit authority for not stepping up and doing what they should do to protect you and others.

**RICHARD SCHMELING:** And Senator, you-- the point you make is very, very good. And I think it's, it's critical in dealing with the problem. And I would agree with you, that we need to have it out there so the public knows the consequences of improper conduct. Thank you for--

**McKINNEY:** Thank you, too.

**RICHARD SCHMELING:** Yes.

**DeBOER:** Thank you, Senator McKinney. Other questions for this testifier? I don't see any. Thank you for being here. We'll have our next proponent.

**ELIZABETH ELLIOTT:** Good afternoon, members of the Judiciary Committee. I'm Elizabeth Elliott, E-l-i-z-a-b-e-t-h E-l-l-i-o-t-t, director of Lincoln Transportation and Utilities. I'm here to testify in support of LB619. StarTran Transit System is a vital division of Lincoln Transportation and Utilities. Every day, our transit team provides essential services to our community, to ensure that they can get to jobs, doctor's appointments, the grocery store and more. Our bus operators, who have dedicated their careers to Lincoln Transit System, are the heart of our organization. Bus operators do their job because they want to serve their community and help people. Thankfully, the majority of our riders are amazing individuals who are pleasant and appreciative of the services. However, operators often must deal with rude, angry or even violent riders. Admittedly, bus operators are not the only service professionals that have to deal with rude or angry customers or customers with mental health issues. However, they are the only service professionals that I can think of that are isolated in a small, confined space, strapped to a seat, with their backs to a group of individuals and have limited ability to move or even defend themselves. Every year, we have operators physically assaulted by passengers. One incident recently, our bus operator was faced with one passenger harassing another passenger. The bus operator told the harassing rider to stop the behavior or get off the bus. The harassing passenger walked up beside the operator, yelled profanities and punched him in the face. The operator had no ability to protect or defend himself. Thankfully, the injuries he sustained were minor, pain, swelling, bruising. However, the fear that that could happen again not only impacts that driver, but impacts every other driver that that could happen to. No one should go to their jobs afraid that they might be assaulted. LB619 protects these operators and lets them know that their communities support them and appreciate the essential services. Therefore, we ask for the support of LB619. And, and to answer Senator McKinney, who I, I know is not here, but currently an assault like that is a Class I misdemeanor. So at most, it's up to a year in jail, up to a \$1,000 fine, or a combination of both. You also could be charged under the city ordinance, which is a city assault, which is only up to six months in jail and up to a \$500 fine or a combination of both. I apologize. I haven't been in the public defender's office for about six years now. So memory I have to go back to, but only does it become a felony if you have an-- a-- an instrument, a deadly instrument. So if I had brass knuckles and punched you and there is serious bodily injury, could that potentially become a felony? And that could be a second degree assault or a--

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**DeBOER:** I'm going to--

**ELIZABETH ELLIOTT:** --first degree assault. Thank you. Sorry.

**DeBOER:** --I'm going to stop you because of the red. But then I'll ask you--

**ELIZABETH ELLIOTT:** Yes. Sorry.

**DeBOER:** So was-- in that, in that instance, was there a prosecution of that assault?

**ELIZABETH ELLIOTT:** There was. We do have a great partnership, here in Lincoln, between the, the Lincoln Police Department and the county attorney or the city attorney's office. It could be prosecuted under either state statute or city ordinance. And so, assuming they can identify and find the individual that happened, we have had success with having those prosecuted. The penalties, though, are typically of that misdemeanor and fine or minimal jail time.

**DeBOER:** So the, the hatchet situation. That's a felony.

**ELIZABETH ELLIOTT:** Potentially, it could be. If they're just carrying--

**DeBOER:** I think I remember the description. And it was threatening with the hatchet.

**ELIZABETH ELLIOTT:** Yes.

**DeBOER:** Don't know exactly what else happened. I can't--

**ELIZABETH ELLIOTT:** Right. If they are threatened.

**DeBOER:** It, it was a couple of years ago, I think, that I heard that one. So the face punch was prosecuted, you said. If they can find them, they'll prosecute them. That, of course, whether it's a felony or a misdemeanor is irrelevant to whether they can find them.

**ELIZABETH ELLIOTT:** Exactly. It is.

**DeBOER:** So I think what Senator McKinney was asking and it's something that I asked in previous years, was, first of all, right now, could we improve driver safety like overnight, by putting up a sign, in all of these buses, that says-- because apparently, there's not a sign that says assaulting a bus driver is punishable by-- as a crime-- is a

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crime punishable by up to a felony. Why don't we have a sign like that?

**ELIZABETH ELLIOTT:** We do have, as Mr. Schmeling was indicating, we do have codes of conduct that are posted and that type of behavior is listed on there as prohibiting it. I, I don't believe--

**DeBOER:** I think we should highlight it. I think we should highlight it in a sign. Do we have a sign that says it? Like--

**ELIZABETH ELLIOTT:** We--

**DeBOER:** --if we pass this bill, we should do it. If we don't pass this bill, we should do it. Before we pass this bill, while the bill is being passed, we should do it. There should be a sign.

**ELIZABETH ELLIOTT:** --and, and we could definitely post, post a sign that says assaulting a bus operator is a crime. I don't know that we could go so far to say it's a felony, because punching someone--

**DeBOER:** I said up to a felony, which it would be, because if you did it with a weapon, it would be a felony,

**ELIZABETH ELLIOTT:** Potentially, yes. We could do that.

**DeBOER:** So.

**ELIZABETH ELLIOTT:** I-- yes.

**DeBOER:** I mean, I'll print it out on my printer at home if you want me to. I mean, we should--

**ELIZABETH ELLIOTT:** We do--

**DeBOER:** --have those signs. We should have those signs up tomorrow.

**ELIZABETH ELLIOTT:** And we do have a number of different signs. I, I would submit that the-- posting another piece of paper on there will go unnoticed and will not make a difference. However, we have just recently, in the last two weeks, installed infotainments in our system and that is one that we are going to post on there. It is a scrolling electronic board that will be on there. It would be the focus of attention for our, our, our riders, rather than searching, because there are a number of different FTA-regulated postings that we already

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have on our buses. And so adding another piece of paper is likely not to have any results.

**DeBOER:** I mean, I-- it would be worth a try.

**ELIZABETH ELLIOTT:** It would be worth a try. Yes.

**DeBOER:** The other thing I asked about was whether or not we could do something to protect them, actually, with-- in other places I've been, there's-- and I did some research on this. There's cages you can put around folks. There's Plexiglas, things like that.

**ELIZABETH ELLIOTT:** And, and we do have some of that. We installed some of that during the pandemic. It is something that, for some operators, creates a very claustrophobic situation, because they're even more enclosed in a small space and should-- they are set up, but there is that fear that if they're in an accident, now they're even more trapped. And so, that is something that not all-- some operators absolutely have asked for that and we've discussed it, but some are very much against that because of the, the feeling of claustrophobia.

**DeBOER:** OK. So it's not-- Yeah. OK.

**ELIZABETH ELLIOTT:** It's an option.

**DeBOER:** All right. But let's put some signs up.

**ELIZABETH ELLIOTT:** Absolutely.

**DeBOER:** Are there questions from the committee? Let's start with Senator DeKay.

**DeKAY:** Quick question. This is going a little bit farther down the road. This bill is to protect the drivers and stuff. What happens if a driver is punched or rendered incapacitated while the bus is moving, hits a power pole and passengers get hurt? Where does that-- where does the penalty process go from there?

**ELIZABETH ELLIOTT:** There could be a number of different charges, I, I believe, that a prosecutor could bring. Obviously, it would depend on the level of injury. It-- you know, up to and including if someone had died in that crash, there could be, as was spoken earlier on a different bill, manslaughter, potentially, or other charges. But there could be a number of potential crimes that could be prosecuted.

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**DeBOER:** Senator Holdcroft.

**HOLDCROFT:** Thank you, Vice Chair DeBoer. Can you go ahead and finish your thought on what constitutes a felony? I mean, you started off by saying a weapon.

**ELIZABETH ELLIOTT:** Yes, definitely. No, absolutely. So there are first degree and second degree assaults that are felonies, currently, under our code. The second degree assault is you have to have a dangerous instrument and bodily injury. And then first degree assault is serious bodily injury. And so, it-- the typical bruising, swelling, black eyes, would not rise to the level of a serious bodily injury.

**HOLDCROFT:** OK. Thank you.

**ELIZABETH ELLIOTT:** Thank you.

**DeBOER:** Thank you, Senator Holdcroft. Senator Geist.

**GEIST:** OK. I have, I have a couple questions. I-- this-- there are other city officials that would fall under this, like a-- and I'm just reading the bill. A police-- a peace officer, a probation officer, firefighter, emergency, so it's not out of the norm for a city employee to have-- to be treated, I guess, a bit differently than just an average citizen.

**ELIZABETH ELLIOTT:** That is correct. Currently, the statute includes the healthcare officials, the firefighters, the police officers, probation officers, as well. And, and part of it is that, that heightened job requirements and-- as well. I think what sets transit operators apart is the fact that they really-- you and I, if someone would walk up here and try and punch us, we could hopefully run away, leave, I could--

**GEIST:** You could get away. Sure.

**ELIZABETH ELLIOTT:** --get away. The difference with transit operators is they can't just run away. The bus is running or even if, even if it's not moving, they're still confined to their seat. They're strapped in with their seatbelts, they're backed into a corner and there, typically, are a number of individuals behind them, on the bus, already riding. So it's an exceptionally dangerous situation, not only for the rider, but the passengers.

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**GEIST:** OK. So I'm just putting myself in, in their place and I'm thinking, OK. So what would I do to defend myself? Can I defend myself?

**ELIZABETH ELLIOTT:** You could if you could put your hands up or swing, but you would not be able to stand up. If the person's hovering above you and and you're in a seated position as an operator, you're clearly in a position that's not likely to have much [INAUDIBLE].

**GEIST:** I would probably-- I don't know. I have kind of that streak. I might, I might try to do that. But, but in, in their like-- I'm-- in their profession, can they defend themselves? Is that--

**ELIZABETH ELLIOTT:** They, they can. We, we definitely tell them to do what they can. It's just limited, given where they're at.

**GEIST:** Sure. OK. Thank you.

**DeBOER:** Thank you, Senator Geist. Other questions for this testifier?

**DeKAY:** I do.

**DeBOER:** Senator DeKay.

**DeKAY:** Thank you. Off of what Senator Geist asked, if they can defend themselves or can they be carrying a can of mace or something, with them, to protect themselves at that point in time?

**ELIZABETH ELLIOTT:** So on our buses, we do not allow, currently, we do not allow any types of weapons or sprays or anything like that.

**DeBOER:** Thank you, Senator DeKay. Other questions? Thank you for being here.

**ELIZABETH ELLIOTT:** Thank you.

**DeBOER:** Next proponent.

**TUAHE CHANG:** Good afternoon, Senators of the Judiciary Committee. My name is Tuahe Chang, that's T-u-a-h-e C-h-a-n-g. I'm here on behalf of Transport Workers Local Union-- Local 223. I want to thank Senator Mike McDonnell for supporting and bringing this bill forward. This is going to be our fourth shot at this attempt. Last year, we were very close. We just happened to run out of time and the bill did not get voted on. I'm here to testify, also, to bring to light, just like how

these individuals had stated, that our jobs are not like many others. You know, we are professionals that are servicing a community, a community of those that are in extreme poverty, those that are in, in the state where they have no help with mental illness. Those-- we have individuals who are, you know, addicts and drunks. So we're dealing with people that are highly agitated, especially in this economy, the way inflation is. We are dealing with people that are dealing-- and battling demons on the daily. And so, I've been a bus operator for the Transit Authority of Omaha, Nebraska, for seven years now. Early into my career, I was assaulted in the line of duty. One evening, while driving, I come up to a stop. I open my doors. A gentleman comes in. I, I inform him, hey, the fare is \$1.25. He does not have the fare. He spits in my face and then he lunges at me and connects and it's a fight. He's on top of me. I'm only about five feet tall. This gentleman was six foot five. Towered over me. Right. I'm sitting there in my seat, I'm strapped, I'm clawing, scratching, pushing and trying to get him off of me, you know? And while this attack is ensuing, I remember, at one point, looking back and all the patrons [INAUDIBLE] customers that are riding, they all have their cell phones out, recording this. No one comes to my aid. You know, in the event that an officer does come, that report time-- response time is about 10 minutes. So I just wanted to bring you to light that our job, you know, it's, it's very scary. You know, we have to come back to that same spot, you know, the next morning. We might see that same individual over and over again. And so it's, it's very scary. And the word on the street is that, yes, if you assault a bus driver, it's a slap on the wrist. You know, for, for, for instance, my case, the guy made a plea bargain with the city prosecutor. He walked scot free, you know, walked away free, without any incidences, you know. And I still have to see this individual daily. It brings a lot of post-traumatic stress to me. And you're going to hear testimony from one of our [INAUDIBLE] who recently was assaulted. And her case was very severe. But just-- if you guys have any questions, I'll be more than happy to answer any of your questions.

**DeBOER:** Thank you for appearing here. Senator Geist.

**GEIST:** I do have one. And, Mr. Chang, thank you for your testimony. And thank you for your service to your community.

**TUAHE CHANG:** Thank you.

**GEIST:** How-- what percentage of people ride your bus that, that you're concerned about?

**TUAHE CHANG:** All of them. The moment, the moment you open the door, you don't know if, if, if that individual is a good person or a bad person. You don't know if they're on drugs or they're drunk. And I would say about 95 percent of the time we're dealing with those kind of individuals. Yes, we have the grandma that needs the ride to go to her appointment or to go to the grocery store, who I'm very happy everyday, to pick up. But we are also very scared of the individual that we pick up at night who's been drinking a fifth of vodka right before he gets on. And now he's--

**GEIST:** So, so--

**TUAHE CHANG:** --highly intoxicated.

**GEIST:** --with, with that individual, you, you-- how many-- I mean, are those the majority of the people you drive around?

**TUAHE CHANG:** Yes. Yes. Yes. And I implore any one of you senators to, to, to come on board and take a ride on, on a public transit bus, so you see, firsthand, what the operators are dealing with daily. You know, unlike many of your jobs, where you can ban and bar somebody, this is a public service. We are providing a public service to the community. There is no ban and bar. You know, someone assaults you tomorrow, spits on you tomorrow, he's getting on your bus, again, tomorrow. And he's going to antagonize you and say, ha ha, nothing happened, you know. It's very scary. And I want my brothers and sisters, you know, those that I work along with, to be protected. You know, I want-- it's not that I want to fill up-- we want to fill up your prisons or jail cells, but we need this as a deterrent. Because it is not a felony unless, like she stated, that you are obstructed with a weapon, you know, a, a knife or something like that. Right. But if it's just your fists or you get spit on or something like that-- we had a driver. He got slapped upside the head with a-- just like a water bottle where, you know, it was drinks getting thrown in your face or trash getting poured on you, you know. But we need your support. We need your support. We need your protection in passing this bill, so that we can be protected. Flight attendants, nurses, they are protected. OK. Why are not bus drivers? We are just as important as first responders. You know, our eyes and ears are of the community. You know, there are many of our bus drivers who have helped find lost children. You know, we navigate the city for those that can't find, you know, where to go. So we need your help and your support.

**GEIST:** Thank you.

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**DeBOER:** Thank you. Senator Geist. Other questions? I have one for you.

**TUAHE CHANG:** Yes.

**DeBOER:** Just brought up by what you were just saying to Senator Geist. Would-- do you want the-- somebody, you know, throws trash at you to be the same level of offense as someone punches someone in the face?

**TUAHE CHANG:** Well, there's-- that's going to be a lot of gray area. Right. But, you know, if they know that, you know, if I physically touch you and harm you and cause bodily stress to you, then it is a felony. It's probably going to, you know, give them a second [INAUDIBLE] if I do this, I'm going to go to jail, you know, versus right now, if they feel like--

**DeBOER:** Right. So, so I guess what I'm asking is, would you support a carveout type of thing, where it said something like, if you don't physically contact the bus driver, then it's not a felony. So like if you just pour a Coke on their head-- I have a Coke here-- which obviously is terrible. And-- but should someone go to jail for that many years for that, versus actual punch in the face, which is a really serious thing. I just wondered what you thought about that.

**TUAHE CHANG:** Well, you know, like I said, that-- there's going to be-- those are going to be very isolated instances.

**DeBOER:** Yeah.

**TUAHE CHANG:** You know. But I'm on, on the normal, you know, verbal assaults happen just about every other trip where we turn around the bus. But verbal assaults lead to, you know--

**DeBOER:** Yeah.

**TUAHE CHANG:** --physical assaults. So, you know, Coke being poured on you can lead to, you know.

**DeBOER:** Sure. But unless it led to it, would you want it to be treated the same way?

**TUAHE CHANG:** I just want us to be protected. And I just want this to be used also as a deterrent that, hey, you know, if you assault the bus driver, that you physically cause bodily harm to the bus driver, then, then, you know, there will be consequences. You know,

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**DeBOER:** Thank you so much for testifying and for your, your services to Omaha.

**TUAHE CHANG:** Thank you. Thank you.

**DeBOER:** I appreciate it.

**TUAHE CHANG:** Thank you for your time.

**DeBOER:** Oh, there is one more. Senator DeKay.

**DeKAY:** Is there any protection for you if somebody verbally assaults you without hitting you, that you could say hey, that person's not going to be able to get on my bus tomorrow morning.

**TUAHE CHANG:** Because-- just, just for verbal assaults, no, because we are a, a public service. So we are providing public service to, to anyone. We cannot deny someone a service, you know, on their age, gender, religion, race. Just because I-- Senator DeKay, I hate you. I have an ae against you. You can no longer ride-- we cannot do that. So verbal assaults, it might have happened today and I see you again, tomorrow. And now I'm-- you know, I see your face again. I'm agitated. Oh, because of you, you said something to me or because you made me late, now I'm going to assault you the next day. So it's like, you know, it, it doesn't-- you don't have anything right now that, you know, would, would help, you know, But we need this so that it would be a deterrent. I believe in, you know, we need to be protected, just, just like, you know, nurses or flight attendants.

**DeKAY:** Thank you.

**TUAHE CHANG:** Thank you all.

**DeBOER:** Next proponent. Welcome.

**BLANCA ACOSTA DE AVALOS:** Hi. Good afternoon, Senators. This is the first time I've been in this situation. My name is Blanca Acosta-- M. Acosta De Avalos, B-l-a-n-c-a A-c-o-s-t-a d-e A-v-a-l-o-s. You got the story right there. And I was-- if I read it, it might take more than, than 3 minutes. So you can read it out there. It happens on July 22nd last year. And to make it shorter, if you want to read it, go ahead. I was assault by this kid. He was 15 years old. And if I don't prosecute him, he wouldn't be in [INAUDIBLE] for the rest of his age, which is going to be 18. I don't know [INAUDIBLE] age here in Nebraska, because I prosecuted him. I mean, I followed the court. And he will be there

until-- he turned 16 in December. And I tried to defend two-- four girls that he tried to beat them up. And he-- I, I not even get off the bus, but I'm blocking off with the shield. So I called dispatch, followed the procedures-- Metro's procedure and I just turned myself, grabbed the phone and he stopped beating me up. He got his friend, which is just right there and tried to-- I was-- he pulled me down, kicked me. And thank God that they don't have nothing on hand. But he was on, he was on what's called--

\_\_\_\_\_: Probation.

\_\_\_\_\_: Probation.

**BLANCA ACOSTA DE AVALOS:** --probation. And when I was to my last court, guess what? They got him with a gun. And when I went to the court, he was in chains, chains on his legs. And the state got his custody. But if that day he got a gun, he-- I won't be here. I won't be a grandma. I won't be a mother and I won't be a wife. I won't be here, telling you this story, because he might be with a gun. Who knows. But thank God that doesn't happen. So these people, he was on drugs, because he said he don't know what the heck he is doing. And I saw a lot of stories about drugs that can be permanent.

**DeBOER:** Thank you for your testimony.

**BLANCA ACOSTA DE AVALOS:** And this is the story, right there. I don't want to read it because I don't have a long, long time.

**DeBOER:** We have it. Thank you very much for passing that out for us.

**BLANCA ACOSTA DE AVALOS:** Yeah.

**DeBOER:** Let's see if there are any questions.

**BLANCA ACOSTA DE AVALOS:** And I still got anxiety. I still got-- I can't-- when I got somebody on the bus, I still got anxiety. Got headaches. I got beat up on my head, bruises all over my, my body and my back and three months out of work. Thank God, maybe, you know, that we have worker's comp.

**DeBOER:** Let's, let's see if there's--

**BLANCA ACOSTA DE AVALOS:** Thank God this guy is not here. He's on jail.

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**DeBOER:** Let's see if there's any questions. Are there any questions?  
All right. Thank you for being here.

**BLANCA ACOSTA DE AVALOS:** Thank you.

**DeBOER:** Next proponent. Is there anyone else who would like to testify  
in favor of the bill? We'll move to opponents.

**SPIKE EICKHOLT:** Good afternoon, again. My name is SpikeEickholt,  
S-p--i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of  
Nebraska and the Nebraska Criminal Defense Attorneys Association in  
opposition to LB619. The proponents and the support for the bill is  
based on the assumption that if we make all assaults on transit  
drivers felonies, that that's going to have a deterrent effect. But if  
you listen carefully to the proponents, they explain that the people  
who are assaulting them are often intoxicated, mentally ill, poor.  
Senator DeBoer asked one of the proponents if they put up signs or if  
they somehow notified people who ride buses that they may be subject  
to prosecution even including up to felonies, they seemed sort of  
uninterested and non-committal of that. And then simply said, at the  
end of it, I think, well, that'll just be another piece of paper that  
they won't read anyway. If they're not going to read paper-- pieces of  
paper on the bus, people are not going to look up what the statutes  
provide for penalties. What this bill would do would make every  
assault on a transit driver a felony. And right now, a third degree  
assault is if you cause bodily injury to another person, regardless of  
who they are, it's a misdemeanor, 0-1 year imprisonment. That's up to  
a year in jail. If these things aren't being prosecuted, if they're  
not being investigated, then making it a felony is not necessarily  
going to be the same-- make it any more likely to be investigated or  
prosecuted. We haven't heard anyone from law enforcement that  
explained that's going to be the case. We haven't heard anyone from  
prosecutor's offices explain they're going to prosecute these things  
more seriously. That's not the case. What it will do, it will uphold--  
it will expose a certain group of people, a certain demographic, to  
felony prosecution for every confrontation, every incident, that  
happens on a bus, similar to your interaction with a police officer.  
No disrespect to the transit drivers at all. I understand their  
predicament, at least I appreciate their predicament. I may not really  
understand it. But the reason that we offer protections to police  
officers and first responders, is because they have certain requisite  
training. They have powers that are given by the state to them. Police  
can kill people. Police can detain people, police can arrest them.  
They have de-escalation training every year. They have training on

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recognizing mental illness and intoxication and in working with people in that state and de-escalating those situations. That's not the same, necessarily, for transit drivers. There are other responses beyond carceral responses, beyond simply increasing a penalty that would give them, I would submit, a false assurance they're going to be any more safer. They are structures. They are signs. If you look on page 10 of the bill, lines 7-11, the Legislature has actually done this when it comes to healthcare providers, specifically direct hospitals and other licensing entities that are health clinics and so on, to post a sign prominently, with certain advisements. That's something that could be done alternatively. Somebody asked-- I think Senator DeBoer asked if there were any kind of structures or protections. And again, it seems like there really isn't. And that's something that other jurisdictions have done to protect transit drivers. I'll answer any questions if anyone has any.

**DeBOER:** Are there any questions? Senator DeKay.

**DeKAY:** Thank you. Thank you, Spike. What can we do? You know, we're talking different between-- a little bit difference between transit drivers and first responders. What can we do to let them know that, that they can be assured that they're going to be protected to do-- to fulfill their duties as a driver to the public?

**SPIKE EICKHOLT:** Well, one thing, I suppose you could require some sort of prosecution. It could-- I don't know if the legislation would really make prosecutors charge crimes, but that's one thing. If these things that are charged-- that could be charged as misdemeanors not being pursued, there really isn't anything the Legislature can do. These things are crimes. You cannot punch, punch a bus driver. You simply cannot do that. If they are getting pled down and dismissed and, and you heard some of the proponents say that the cases were charged but they pled it down and it was just a slap on the wrist, that's not anything the Legislature can really correct, correct. So, but other, other things they could do. I mean, you could appropriate money for local political subdivisions to invest in protective equipment on buses, with the condition they've got to post signs that notify riders that you will be subject to prosecution if you assault or threaten in a menacing manner, which is a type of third degree assault, a bus driver, up to and including felony offenses. That's one thing you could do.

**DeKAY:** If I understand some of the earlier testimony, these are getting watered down to the fact that-- I'm not-- they're light enough

violations or subject to violations that we're not going to mess with them because we got too many other bigger issues to deal with. Why don't we make these a big enough issue that they can be dealt with?

**SPIKE EICKHOLT:** Because what you're going to be doing is you're going to be exposing people who ride the bus. It's poor people, generally, people who can't afford vehicles. It's people, if you heard the proponents testify, who are mentally ill. It's demographically, people of color. You will expose them to felony prosecution. In my written testimony, I mentioned some of the statistics that we have. We already incarcerate a lot of black people in this state. And this is one I would submit this is one of those situations where, on this face, this is nothing at all racial about it. But this is a crime that we're going to bump up to a felony. If the prosecutors and I can't speak for them that they're not here, but I think it's conspicuous that they're not, this is a bill that is-- they're going to have to deal with if we bump it up to the felony level of prosecution. That's something they're going to have to deal with, because there is no misdemeanor option if this bill passes. I don't know that they're going to be taking it more seriously. I don't know.

**DeKAY:** Is there any, is there any space in between a misdemeanor, a misdemeanor and a felony that-- where we can make it worth, worth prosecutor's time to protect these people?

**SPIKE EICKHOLT:** Well, I think it's worth their time if they want to do it. I mean, zero to a year in jail is not necessarily a small consequence. Right. If you talk to your local jails, I mean, Douglas and Lancaster County, they're essentially full already. Right. So people are serving a lot of jail sentences in our jails. As far as reforming the criminal code, I've had senators or I've asked senators to introduce bills to moderate some of the felony level prosecutions to provide for certain things. I mean, you've heard in other contexts, where if you have a felony that's got a mandatory minimum, for instance, perhaps we could have a safety valve or they can deviate down. And you see the dilemma now. You know, when you-- this is why I'm here for these things. It's nothing against these people. I get it. But if I, if I don't show up and say, no, don't do this felony, because when it goes on, it's just, it's just impossible to modify it later. That's just the predicament we're in, unfortunately.

**DeKAY:** Well, and I-- you know and I think we all want to get to the same place, that these people are protected, that they know that when they go to work in the morning that, just like a first responder,

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they're going to be able to go home safely to their families  
[INAUDIBLE].

**DeBOER:** Thank you, Senator DeKay. Other questions? Spike, I, I do have a question for you. Is that-- what, what assault level is it for throwing trash, liquids, spit?

**SPIKE EICKHOLT:** If you spit on another right now, it's a misdemeanor.

**DeBOER:** OK.

**SPIKE EICKHOLT:** Unless there's a communicable disease and you sort of know that you--.

**DeBOER:** Yeah.

**SPIKE EICKHOLT:** --have some sort of disease. If it's throwing something at somebody, if it's threatening someone in a menacing manner, that's a type of third degree assault. So third degree assault is if you intentionally, knowingly or recklessly cause bodily injury to someone else or you threaten them in a menacing manner. And that can be a verbal threat, it can be a non-verbal threat. It's got to be, perhaps, something more than just throwing trash. It depends on how you throw it. If it's an aggressive, baseball pitch-type thing, that might be considered threaten in a menacing manner.

**DeBOER:** So in the bill, as it's written now, would those-- any of those things become felonies?

**SPIKE EICKHOLT:** Yeah. If, if you could show that the, the third degree assault was done in a menacing manner or the threat was done in a menacing manner, if you look on page 2, line 15, one of the list of offenses in the enhancement stuff is assault in the third degree, pursuant to Section 28-310. I know there's a lot of text to the bill, but I think what revisors was probably had to do, because we've added the certain categories of individuals where this enhancement applies, it would apply to anyone who commits any of these listed crimes, it's just bumped up one more level of enhancement. So it goes from a Class I misdemeanor to a Class IV felony. So yes, that could be it, to answer your question.

**DeBOER:** OK. Thank you. Other questions for Mr. Eickholt? I don't see. Thank you. Next opponent. Is there anyone here who would like to testify in the neutral capacity? Senator McDonnell, I'll note, for the

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record, while you're coming up, that there are two letters, one in support and one in opposition. Senator McDonnell to close.

**McDONNELL:** Thank you, Senator. All right. So trying to answer some of the questions and some this up. In the past, people that have sat in your chairs that have served in the Legislature have decided to take a police officer, a firefighter, a nurse, because of the nature of their work, that if they are verbally assaulted, they have something thrown on them, physically assaulted, we're going to treat that at a higher level because of the nature of their work. What we're asking is to add the transportation workers to that, because they're there because of the nature of their work. Now, it was discussed about more protection, more signage. They don't always just sit in their seat and drive. They do have duties that they help people on and off the bus. I'm not opposed to the signage at all. Any time I think we can inform people, but I think some of these people, regardless, regardless of the signage, if it's a police officer, a firefighter or nurse, even though I, I agree with the signage, I don't know if that's going to deter. But let's say it deters 1 percent. I'll take it.

**DeBOER:** Yeah.

**McDONNELL:** I'll take it. What we have to do is, I think, decide is do we want to add the transportation workers to that list? And also, something that I should have brought up in my opening was this does not include school bus drivers. That was discussed before. But so, talking about the, the, the men and women of, of, of two-- 223 that brought this and then others that have come and shared their stories with me and testified in the past, is that what they want is to be protected and looked at as if we would-- as we have in the past, a police officer, firefighter and nurse. Because they are being assaulted just by doing their job, not based on anything else except for being in that position. For someone that wants to take advantage of, of them, possibly, sitting there, asking, as I said, for the fee, trying to stop a fight on the bus, enforce a mask rule because of the pandemic, all they were doing, so-- and also, they want someone made example of. Yes, there are certain people that actually-- and if you think about the people that police and fire and nurses are dealing with, it's the same cross-section of society that the bus drivers are dealing with. Some do have mental illness and that should be taken in consideration and I think it was talk-- talked about earlier with Senator DeKay. If you want to look at a Class IV felony, which we talked about earlier, it was 0-2, and then one year post-supervision release. OK. But there are some people, again, if I-- John Doe calls

a, a bus driver, Jane Doe, a name versus throwing a pop, versus a punch, versus hitting them with a hammer, of course, there's different levels. But they want these people to be made to actually, not only be punished, but let people know that the punishment is going to happen to others if they decide to do that. And you're talking about 99 percent of the people that ride the bus just want to get from point A to point B. That's all they want. They don't want to see their bus driver, that they've gotten to know, because we've talked about the negative about having that route and that time, where the same person, if I want to assault somebody twice, I know where they're at. How about all the positives for the people that ride that bus every Monday, every Tuesday, at the same time and they get to know that bus driver? They don't want to see their bus driver assaulted. And there's so many reasons to, to do this, based on-- and we have statistics with the courts, based on how it's helped with police, fire and, and nursing. So that's what we're asking. We're asking to add the transportation workers to the same level as we've, in the past, to those other professions.

**DeBOER:** Are there any questions for Senator McDonnell? Senator Geist.

**GEIST:** And, and maybe not a question, but maybe more of a comment. I'm impressed that these guys and gals come back every day to do their job, when they're sitting ducks in that, kind of, a confined area. And I, and I guess my perspective would be that they're employees of the city. They're employees of government. And I, I do think that they're worthy of being protected, whether that's a sign or a cage or whatever. But anyway, I-- you're welcome to comment on that. I-- this is a frustrating bill to me.

**McDONNELL:** No, I, I agree. And, and again, not discarding any level of, of protection, if it's a sign, if it's a-- the cage, but the cage won't always protect them the whole time when they're doing their job.

**GEIST:** Sure.

**McDONNELL:** But also the, the idea of just showing them, I think, the due respect and, and giving them credit for doing the, the job and also saying that we do want to protect you. We do want to send the message and of course, the deterrence level of it.

**DeBOER:** Other questions for Senator McDonnell? Thank you, Senator McDonnell. That will end our hearing on LB619, and bring us to our hearings on LB649. Shockingly, also by Senator McDonnell.

**McDONNELL:** I know this will make you all happy. This is my last bill. And it's my last bill of the year, I mean, with the Judiciary Committee. I still got a couple in Appropriations. But thank you. Thank you, Vice Chair DeBoer, members of the committee. My name is Mike McDonnell, M-i-k-e M-c-D-o-n-n-e-l-l, represent Legislative District 5 south Omaha. I come before you today to present LB649, which seeks to update and modernize Nebraska's arson statutes. I have introduced this legislation on behalf of the Attorney General Hilgers' Office, in an effort to help facilitate and implement these changes. In a broad sense, LB649 includes updated definitional terms used in Nebraska's existing arson statutes, as well as an additional-- provisions that will make Nebraska's arson statutes applicable in the greater number of intentionally set incendiary fire scenarios. The legislation also includes a penalty adjustment that was overlooked in a previous sentencing reform and allows for sentencing enhancement under certain circumstances. More specifically, LB649 eliminates the term-- the definition for "building" in a sec-- Sections 28-501, and replaces it with the term "structure," in order to broaden the instances where Nebraskan arson statutes are applicable. The broader definition is necessitated by the fact that human lives are being risked by fires set in locations that do not fit within the current existing definition of building. This change is, is also made in Sections 28-520, first degree criminal trespass and 28-524, graffiti as both sections are just as rel-- reliant on these terms. LB649 adds "burns" and "causes to be burned" to the list of acts prohibited in various sections, in order to harmonize each of the prohibited acts listed in Section 28-504. The bill also adds "maintains a fire" to the list of acts prohibited by all the Nebraskans' existing arson statutes, in order to hold persons criminally accountable for escalating a fire, even though they did not set the fire. Last, LB649 adds a definition for a "public safety official." It allows the applicable sentence on, on an arson offense to be enhanced one penalty classification higher if the offense committed causes a public safety official to sustain serious bodily injury. It is reasonable, foreseeable that a firefighter or first responder could be injured in the line of duty when someone deliberately makes the choice to set something ablaze or blow something up. This bill also makes arson in the second degree a Class IA felony, as opposed to a Class III felony, due to an oversight when LB605 was passed in 2015. During my time as a firefighter, I witnessed terrible accidents and horrible crimes as a result of fire. LB649 further addresses intentional acts of arson by eliminating gaps in gray areas that currently exist within our laws. Assistant Attorney General Mike Guinan will be testifying on behalf of

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the Attorney General's Office and to provide insight and answer any questions from the committee.

**DeBOER:** Thank you, Senator McDonnell. Are there questions for Senator McDonnell? Don't see any.

**McDONNELL:** Thank you.

**DeBOER:** First proponent.

**MIKE GUINAN:** Good afternoon, Vice Chair DeBoer, members of the committee. My name is Mike Guinan, M-i-k-e G-u-i-n-a-n. I'm the Criminal Bureau chief for the Nebraska Attorney General's Office. I-- here-- I'm here on behalf of the Attorney General's Office and Attorney General Mike Hilgers, in support of LB649. We originally proposed LB913, in 2020, to address shortcomings in Nebraska's arson statutes. In its current version, LB649 incorporates several changes to the present arson statutes. First, Section 3 proposes that second degree arson be amended to a Class IIA felony, which would provide for a penalty of 0-20 years. Prior to 2015, legislation-- legislative changes, first degree arson was a Class II felony, which would make it punishable by 1-50 years, and second degree arson was punishable as a Class III felony, again, 1-20 years, at that time. Arson in the first degree requires proof that the actor knew or should have known that a person is inside the building when the fire is started. Arson in the second degree occurs when the building is unoccupied. LB605, in 2015, restructured the penalties for many offenses and created the IIA felony classification. IIA felonies now carry a penalty of 0-20 years imprisonment. LB605 did not, however, change the penalty ars-- penalties for arson in either the first, second or third degree. Consequently, the penalty for arson in the second degree was effectively lowered from 1-20 years. Now, it carries a penalty of 0-4 years. The penalty associated with arson in the second degree, in which a building or property within the building is intentionally damaged or damaged in the perpet-- perpetration of a burglary, robbery or felony criminal mischief, is not commensurate with the significance of the crime, particularly given, given the severity of the loss of property and the risk of substantial bodily injury to firefighters. Originally, we brought this as a result of an arson-homicide case that we dealt with several years ago. In that case, two gentlemen showed up at the victim's house in the rural countryside late at night. There was a knife fight. Our victim was stabbed 15 times. The next day, one of the men that was involved in stabbing the victim came back and burned the house down. We charged first degree arson in that case,

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along with murder. Ultimately, there was no clear indication, from the law, case law, inside or outside the state, that a person included a dead person. So therefore, the, the court did not allow us to move forward on the first degree arson. The court allowed us to move forward on second degree arson, which lowered the potential penalty or did lower the penalty from 1-50 down to 0-4 years. The other piece that I'd like to mention that Senator McDonnell had mentioned--

**DeBOER:** I'm going to--

**MIKE GUINAN:** OK.

**DeBOER:** --note the red light and then ask you what the other piece is, just--

**MIKE GUINAN:** Sure.

**DeBOER:** --because-- if you can do it in two or three sentences, please.

**MIKE GUINAN:** Sure. The other piece, the public safety officer, in that particular case that I was just talking about, what happened is when they learned that there was an individual inside the house, whether alive or, or deceased, it, it changed the way they fought the fire. Instead-- that they were going to just, since it was out in the countryside, they were just going to let it burn and collapse on itself. When they learned that there was an individual in there, that changed. Their risk level went up substantially, because now they start entering the building with the danger of collapse and all the rest of the things that follow.

**DeBOER:** Thank you.

**MIKE GUINAN:** Yes.

**DeBOER:** Are there questions? So you and I have talked about this, this bill before.

**MIKE GUINAN:** We have, Senator.

**DeBOER:** And. I still have the same concern that I had before, because I see that you still have a very broad definition of structure here. That includes a tent, a vessel-- which, as I recall, last time, I had a coffee cup with a vessel. It was like, this is a vessel. You could put a piece of paper in here and light it on fire and now, I've

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committed arson. So can we, can we talk more about structure and can we maybe make that a little cleaner? Because I understand that you're trying to broaden the definition of arson, make arson broader. In principle, I understand why you're doing that. This is real, real broad. So is there some way we can clean up the language of this?

**MIKE GUINAN:** Well and we did talk before and I know that you raised about the vessel. I think you also had an example where you light a piece of paper and put it in a fireplace. I don't know if you recall.

**DeBOER:** There was something about that.

**MIKE GUINAN:** That piece was stricken out--

**DeBOER:** Oh, great. Good.

**MIKE GUINAN:** --in this version. So there has been some [INAUDIBLE].

**DeBOER:** Good. We're getting there.

**MIKE GUINAN:** And so, Senator, yes. I, I understand your concern with the word vessel. Again, I think at that time, I mentioned that we borrowed some language from different states. I think that might have been from Florida.

**DeBOER:** I just think we probably need to clean this up a little bit, because it's real, real broad now. So that pretty much any fire-- like we have, we have a fire pit that we've built up that, under this, would be a structure. And we put fires in there on purpose. They're meant-- it's meant to have fires. So, I mean, we probably need to clean this up.

**MIKE GUINAN:** Sure.

**DeBOER:** OK.

**MIKE GUINAN:** And there certainly is room, Senator, to work on cleanups. We'd be happy to do that.

**DeBOER:** All right. Thank you. Any other questions? OK. I don't see any.

**MIKE GUINAN:** [INAUDIBLE]. Yep. Thank you.

**DeBOER:** Are there any other proponents? Is there anyone here in opposition to this bill?

**SPIKE EICKHOLT:** Good afternoon, my name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska and the Nebraska Criminal Defense Attorneys Association. So, as the introducer and the proponent explained, what this bill does is a couple of things. It increases the penalty for arson. I think the justification or the arguments made is because it was something that was an oversight, in 2015, with LB605. I was just starting to do this then. So I have to admit I don't remember everything, but I'm pretty certain that that was not an oversight. That was a deliberate decision to adjust the penalties for some of the property crimes and this is one of them. The bill also broadens the definition fairly significantly, which is another reason that we are opposed. To provide for arson, not just for a building, but something called a structure, which is defined on page 2, lines 19-22, which would include any building of any kind, any enclosed area with a roof and any real property or-- and appurtenances to which the building or enclosed area is attached, any tent or other portable building. This is, as Senator DeBoer alluded to, this is very broad and it would expose a lot of people to felony prosecution, not only just for fire to a structure, but fire within a structure. You know, out there on O Street, on West O, there are people living in tents and in the winter they have fire. So sometimes, those things may burn and it's dangerous, obviously, to the fire people, but it's not the same, we would submit, as an actual building or another-- or an apartment complex or some other thing where people may live. This is one of the bills that we oppose for increasing penalties. The last testifier, the proponent, testified-- he explained that this was done in response to a case a few years ago that the Attorney General's Office prosecuted, where they could not establish-- the arson conviction. It was a first degree arson conviction. I actually looked up that case by looking at what we talked about last year. If you look and I have some news article, the people were still, nonetheless, found guilty of other related crimes and they got a pretty significant sentence. So I want to mention that so the record is clear, that without this bill, there was-- each-- I think the father and son got 42-64 years and the other one got 40-60 years imprisonment for their involvement, because they were found guilty of second degree murder and perhaps some other crimes, as well, including a third person, who was found guilty of an accessory. I just mention that, because when you look at one crime and you think to yourself, wow, this isn't really that big of a deal, you have to consider or at least appreciate the acts that might result in this crime and the other crimes that are impacted and the other crimes that people commit

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when they do these kind of things. I'll answer any questions if anyone has any.

**DeBOER:** Are there any questions for Mr. Eickholt? Senator Blood.

**BLOOD:** Thank you, Senator DeBoer. Spike, can you repeat what you just-- I-- I'm having trouble hearing you. the last part of the sentence before the--

**SPIKE EICKHOLT:** Sorry.

**BLOOD:** --it's not your fault. It's the room's fault.

**SPIKE EICKHOLT:** You know, when, when you're asked to-- when senators are sometimes, sometimes given a bill, and I say, hey, let's increase the penalty for this, because this is only 0-3 or this is only 0-4, one thing that you have to--that I would respectfully suggest you should appreciate, that if you increase a penalty here, try to realize how this crime might be charged and what other kinds might be charged with it. For instance, if you set fire to a building and there's human remains in it and you knew there were human remains in it, chances are you've committed some other crimes, as the example that I handed out happened. In other words, the Attorney General testified earlier that they weren't able to show a first degree arson, based on the fact that the human remains are not considered a person, under the current definition of arson. However, the people were involved in a fight. That fight resulted in a stabbing and, and somebody died. And they were convicted of second degree murder and got a pretty significant sentence. So I just wanted to mention that.

**BLOOD:** Thank you.

**DeBOER:** Other questions? Senator DeKay.

**DeKAY:** Could, could it be defined as different than a structure, as something that is built, like a fireplace, firepit, anything that isn't built to use fire in, trash can, whatever, as a structure, in that point?

**SPIKE EICKHOLT:** Yeah. If you look at the-- page 2, lines 3-11, that was a current-- that's the current definition that we have now. A building, which would exclude those things. And that's why we have a problem with that, because it redefines it to include structure to mean buildings and other things.

**DeKAY:** The other thing, you know, you mentioned about live-- people-- homeless people living in tents and stuff, you know and those tents sometimes caught-- start on fire, those wouldn't, in my mind, wouldn't be considered an arson. Those are an accident that happened. It's not.-- So, there-- we got to define what is actually arson or what is-- an act of nature or whatever.

**SPIKE EICKHOLT:** That's right. And respectfully-- and that's, that's probably, it is, as it is now. But if you look on page 3, lines-- starting at lines 5, that paragraph: the person sets fire to any structure or property contained inside a structure or maintains a fire. It doesn't not necessarily mean that you need to do so accidentally or unintentionally. You simply need to set fire to it.

**DeKAY:** I'm done.

**DeBOER:** Thank you, Senator DeKay. Other questions? Thank you, Mr. Eickholt. Senator-- are there any other opposition testimony? Anyone in neutral? Senator McDonnell, as you're coming up, there was one letter in support.

**McDONNELL:** I waive.

**DeBOER:** Senator McDonnell blissfully waives--

**McDONNELL:** Thank you.

**DeBOER:** --closing. Closing.